

April 25, 2006



**TRANSCRIPT**  
**April 25, 2006**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

George Leventhal, President  
Phil Andrews  
Nancy Floreen  
Thomas Perez

Marilyn J. Praisner, Vice President  
Howard Denis  
Michael Knapp  
Steven A. Silverman  
Michael Subin

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[MUSIC]

Council President Leventhal,  
Good morning, our good friend Rabbi Greg Harris from Congregation Beth El is here.  
Please rise for an invocation.

Rabbi Greg Harris,  
Dear God, bless these leaders and advisors of Montgomery County, Maryland. May they be filled with your insights and guidance and patience as they lead the residents of this County toward fulfillment of your desire that we partner with you to complete your creation. As this Council deliberates the various issues of this budget cycle of how to educate our children, how to support our elderly, to provide safety to our County workers and residents, choose how to realize our communal obligation to aid the needy and enhance all of our quality of life. I ask that you, oh God, offer us your humility. May the employee of this County and all who come into contact with these highly regarded professionals throughout the County, the Police and Fire Departments, the teachers and principals, the doctors and nurses working in hospitals and local community clinics, libraries, and employees of all levels, may they all recognize your divine attributes of [speaking Hebrew], compassion, and [speaking Hebrew], fulfillment and wholeness in their lives. Finally, dear God, we ask your protecting shelter over the men and women of this County who will be in harm's way today. This includes the Police and Fire and Sheriff Departments, but includes the men and women who proudly serve in the armed forces right now. Watch over them during these difficult days, protect them as you protect all of your creation, bring comfort to their families who miss them dearly during this time of separation. And with these words and the prayers of our hearts we say amen.

Council President Leventhal,  
Amen. Let me say [speaking Hebrew] to Rabbi Harris. Congregation Beth El is a very special congregation for the County Council. Unless I'm mistaken, I believe it's the home congregation of Councilmember Denis. It's also where I was Bar Mitzvahed and it's where my sister, [Sarah Rorke], is employed as director of family education. It's always a delight to have you here, Greg.

Rabbi Greg Harris,  
Appreciate everything the Council does.

Council President Leventhal,  
We have now, always looked forward every year to the presentation of the Golden Shovel Awards. Councilmember Floreen.

Councilmember Floreen,  
Thank you, Mr. President, I'd like to call up our recipients of the Golden Shovel Awards, the folks are here today: Patrick Williams, Bernie Long, Steve Fischer, Jerry Kloubukowski, Officer White, and Paula Goldberg, and Ms. Mathias, if you'd come up too. Come on up around here. The longer I'm here on the County Council the more I am glad

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1 that I started this little award program. We're wrestling with a \$4 billion budget and we're  
2 arguing about really big picture things here. Come on. You can get a little closer. But at  
3 the end of the day, it's a small things that really matter and it's what we do for our  
4 community that really matters. This event is really to celebrate our residents who do kind  
5 things without being requested that make Montgomery such a great place to be. It's a  
6 perfect day outside today and nobody thinks it really snowed this winter, but it did. And, in  
7 fact, we had a really bad Sunday snowstorm in February, as well as a couple of  
8 challenging ice events, we thought to ourselves it wasn't a bad winter really, should we  
9 really do it? But we did send out the nomination forms, and had a nice collection of  
10 nominees. Today we have a number of the world's best neighbors, who not only attended  
11 to their own snow and ice removal demands but really went the extra mile for their  
12 neighbors. This year we're honoring 11 residents nominated by their neighbors who put  
13 the golden rule to work with their shovels and have been nominated for the Sidewalks are  
14 for Everyone, SAFE, Golden Shovel Awards. One of our Golden Shovelers, Steve  
15 Fischer, not only takes care of his neighbor's sidewalks and driveways, he continues to  
16 shovel all the way to the school so the kids can walk in safety. Others like Paula Goldberg  
17 have been helping their neighbors for at least 20 years, just ask [Faye Mathias], who's  
18 here to celebrate her. Jerry Kloubukowski, a Councilmember in Poolesville, is another who  
19 takes the time to know when his neighbors really need help and he gives real meaning to  
20 the word "Public Servant." Bernie "Pop-Pop" Long is another solid citizen who has been  
21 shoveling neighborhood sidewalks and driveways for years. Richard and Brenda White,  
22 and I think it's Homeland Security Officer White, have been helping their neighbor for the  
23 past five years. In nominating the couple their neighbors said in this world with so many  
24 bad things, like violence, hate, et cetera, there's still good people in this world... and mine  
25 is within my reach, my neighbor, the Whites. I'm delighted to welcome these 11 winners of  
26 this year's Golden Shovel Awards, and I know my colleagues, and all County residents,  
27 really appreciate their community spirit and the sense of community that they embody.  
28 We'd also like to thank Bill Schlossenberg and all his colleagues at the "Gazette"  
29 newspapers for once again, for helping us to publicize these programs. Many of our  
30 nominators just clipped the coupon, sent in the form -- added some additional notes and  
31 sent it in, and we're really grateful to the paper for its assistance. So, once again,  
32 congratulations, folks, and keep up the good work. And maybe we'll have a better winter  
33 next year for snow removal.

34  
35 [LAUGHTER]

36  
37 Councilmember Floreen,  
38 Although budget wise it was good, you know, the numbers are down in terms of the  
39 expense, but we'll get you even more kudos next year. So thank you.

40  
41 [APPLAUSE]

42  
43 Councilmember Floreen,  
44 So we have these very inexpensive, but meaningful, certificates for everyone.

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1 [LAUGHTER]

2  
3 Councilmember Floreen,  
4 First for Patrick Williams, in grateful recognition for your extraordinary snow shoveling  
5 efforts and assistance. Patrick, thank you, and here's your pin, wear it proudly.

6  
7 Patrick Williams,  
8 Thank you.

9  
10 Councilmember Floreen,  
11 Bernie Long, here you go. Thank you very much and here's your pin and your certificate.  
12 Wear it well.

13  
14 Bernie Long,  
15 Thank you.

16  
17 Councilmember Floreen,  
18 Steve Fischer. And you're on baby watch!

19  
20 Steve Fischer,  
21 Yes, indeed.

22  
23 Councilmember Floreen,  
24 So we better get this over with. Thank you very much, Steve, here's your pin and good  
25 luck with taking care of that new grandchild. Jerry Kloubukowski, City of Poolesville,  
26 nothing like a municipal government servant to serve the people well. Thank you.

27  
28 Jerry Kloubukowski,  
29 Thank you, appreciate it.

30  
31 Councilmember Floreen,  
32 Richard -- or is it Bill White?

33  
34 Richard White,  
35 Richard.

36  
37 Councilmember Floreen,  
38 Richard White, Homeland Security Officer par excellence.

39  
40 Richard White,  
41 Thank you very much.

42  
43 Councilmember Floreen,  
44 Here's one for your wife as well, a twofer.



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1 Richard White,  
2 Very kind, thank you.

3  
4 Councilmember Floreen,  
5 And Paul Goldberg. Thank you so very, very much. Would anyone like to say anything?  
6 [Faye], come on up.

7  
8 Faye Mathias,  
9 I'm not much of a speaker.

10  
11 Councilmember Floreen,  
12 That's okay, come on up and speak into the microphone. All the way. People will hear you  
13 better if you get over here.

14  
15 Faye Mathias,  
16 I don't have anything planned other than I'll just speak from my heart. I've known Paula  
17 over 20 years, and Alan, and she's been involved with Project Linus baby quilts, and I  
18 remember a neighbor moving in, he came up from down South, he had a job. He brought  
19 a sleeping bag, she went to her church. She went to the thrift store, bought a microwave,  
20 dishes, pots and pans. He moved out, the young girl was there, we were having rain  
21 storms and she was getting water in her basement, she had trees growing out of her rain  
22 spout. I look out and she's cleaning out the rain spouts and this is just a small amount of  
23 things she does. And she's there when anyone is sick, she took care of the elderly lady  
24 next door, she and Alan. I could go on and on. She needs a Humanitarian Award.

25  
26 Councilmember Floreen,  
27 So, in other words, we should have had more awards for her. Thank you Paula, and thank  
28 you everyone for what you do for Montgomery County. And come back, we've got to have  
29 a picture here.

30  
31 [APPLAUSE]

32  
33 Photographer Unidentified Speaker,  
34 Everybody look. Terrific, thank you very much.

35  
36 Multiple Speakers,  
37 Thank you.

38  
39 Council President Leventhal,  
40 All right, congratulations to all the recipients and thank you, Councilwoman Floreen. Ms.  
41 Lauer, are there any Agenda or Calendar changes to report?

42  
43 Linda Lauer,  
44 Yes, we have two additions to the Consent Calendar today, introduction of a resolution to  
45 approve the mutual aid agreement with the Maryland National Capital Park Police. A

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1 public hearing will be scheduled on May 9. Introduction, also, of a resolution to amend the  
2 County's energy policy regarding clean and renewable energy and energy efficiency,  
3 sponsored by Council President Leventhal. We have two Calendar changes. You'll note  
4 the holds in the morning and afternoon of Friday, April 28th, are cancelled. And I do have  
5 two petitions. We have a petition supporting the tutoring and mentoring program of the  
6 George B. Thomas, Sr., Learning Academy, and petitions supporting the renovation of the  
7 Gaithersburg Library.

8  
9 Council President Leventhal,  
10 Very good. Thank you. Are there minutes for approval?

11  
12 Council Clerk,  
13 The minutes of April 4th, 5th, and 6th for approval.

14  
15 Council President Leventhal,  
16 Is there a motion to approve the minutes of the 4th, 5th, and 6th?

17  
18 Councilmember Floreen,  
19 Move approval.

20  
21 Councilmember Praisner,  
22 Second.

23  
24 Council President Leventhal,  
25 Ms. Floreen has moved and Vice President Praisner has seconded approval of the  
26 minutes for April 4th, 5th, and 6th. Those in favor will signify by raising their hands. It is  
27 unanimous among those present. We will now take up the Consent Calendar.

28  
29 Councilmember Knapp,  
30 Move approval.

31  
32 Council President Leventhal,  
33 Mr. Knapp has moved and Ms. Floreen has seconded approval of the Consent Calendar.  
34 Vice President Praisner.

35  
36 Councilmember Praisner,  
37 I wanted to comment on two of the items, Item "A", which is the receipt and release of the  
38 Office of Legislative Oversight report, the Base Budget Review of the Office of Human  
39 Rights. I wanted to thank the Department again for another excellent report. I'm not getting  
40 tired of saying it, I hope you're not getting tired of hearing it, but report after report, the  
41 office does an exceptional job. I want to thank the Office of Human Rights for their obvious  
42 cooperation with the report because it is comprehensive, and that kind of report is not  
43 possible without the cooperation of the office as well. So I want to thank Odessa Shannon,  
44 all the staff, and members of the Commission, as well, for their cooperation. There are, I  
45 think, significant issues associated with the Fair Housing questions and the fact that the

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1 status of the most recent report that was done is at least three years old from a standpoint  
2 of the work in the region. So I'm hoping that although the office falls under the Department  
3 of Health and -- the Health and Human Services Committee, the housing issues and some  
4 of the management of those issues fall under DHCA well. So I'm hoping that we can have  
5 -- I don't know how Linda scheduled it, but I'm hoping we can have a joint Committee  
6 meeting and discussion on the report. There are lots of issues in there associated with  
7 housing as well as with the excellent work that the office does. Secondly, I wanted to  
8 comment on the inclusion within the report, Item "J", within the resolutions, I should say, of  
9 the appointment of members of the Ad Hoc Agricultural Policy Working Group. I think we  
10 have managed -- Mr. President, you have managed to provide some balance to all of the  
11 issues that are associated with the agricultural interests and the broad community  
12 interests. I think asking former Councilmember Scott Fosler to come back as a Vice Chair  
13 of the group lends some institutional memory from a Countywide perspective to the  
14 program. And I'm sure with Lib Tolbert as Chair and with others on the Committee, that  
15 although everyone I wanted on the Advisory Committee is not there -- obviously there are  
16 nine Councilmembers who had interest on it -- I continue to believe, however, that creating  
17 a Committee is not what we should be about, Getting results on the issues of the  
18 agricultural challenges are what we obviously all want to see happen. That will mean  
19 providing an effective and specific work plan with specific expectations for returns of  
20 information and products that are going to be necessary for us to be able, in the short time  
21 frame that this Council has to deal with land use issues, to address some of the significant  
22 land use issues that we continue to, I think, be worried about in the Ag Reserve. I would  
23 also comment that while this Committee is working, activity is still occurring within the Ag  
24 Reserve that may not be consistent with the ultimate goals that we have. And so timing  
25 and monitoring and also efforts to, I think make sure that nothing additional negative  
26 occurs is what we should be about as well. Thank you.

27  
28 Council President Leventhal,  
29 Mr. Knapp.

30  
31 Councilmember Knapp,

32 That Mr. President, I too want to comment on Item "J". I just want to first thank everyone  
33 who applied in response to your request for submittals to the Ad Hoc Agricultural Policy  
34 Working Group. I know we had many, many qualified folks who had applied. I also want to  
35 thank all the Councilmembers for their continued attention to this issue and interest in and  
36 participation in working with the Council President to make sure we have what I think is a  
37 very fair and balanced group. I think Ms. Praisner's right, there's a lot to be done. There  
38 are many things continuing to move and we need to continue to monitor and the charge to  
39 this group is significant and there's a lot riding on it. So I think we've got a good group and  
40 I appreciate your leadership on it.

41  
42 Council President Leventhal,

43 Thank you Mr. Knapp and Vice President Praisner, Councilwoman Floreen, and other  
44 Councilmembers who were in close contact with me, through staff and directly, in sorting  
45 through the excellent list of applicants. We have dozens and dozens and really hundreds



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1 of thousands of people throughout the County who love the County, love the high quality  
2 of life we have here and appreciate the long tradition of good land use management and  
3 sound planning decisions that have resulted in nearly one half of this County being  
4 essentially off limits to intensive development. When you combine 93,000 acres in the Ag  
5 Reserve with all the federal, state, and County parkland and other open space in our  
6 overall County Master Plan, nearly half the County is not going to be developed now or in  
7 the future, and the largest of this is the one-third of the County that is in the Agricultural  
8 Reserve. We're challenged in many ways. Land is scarce. Louis Goldstein said "The  
9 wisest investment you can make is in land, because God isn't making any more of it." And  
10 that is certainly true. And whether it's a religious use or a housing use or a non-profit use,  
11 school use, charitable use. There are so many good things we would like to see occur, but  
12 we don't want to see them occur in the Agricultural Reserve. So the challenge is do we  
13 maintain the policies we have, acknowledging that times are changing and pressure is  
14 increasing? Do we change the policies that we have and what is the appropriate mix of  
15 carrots and sticks? How do we make farming worthwhile and valuable? And how do we  
16 keep the land valuable so that those who own it are fairly treated and are able to borrow  
17 against it? These are not simple questions, I don't minimize how complex they are. What I  
18 am very optimistic about is that the 15 people who have been selected by myself, in  
19 consultation with colleagues, and I've appreciated the very close cooperation and  
20 consultation, And I hope that Agenda Item 2-J is available there in the corner. If not I -- I  
21 don't want to have to... Well, I'll read them. Okay, I'll ready them. Agenda Item 2-J: the  
22 resolution appoints the following individuals to the Ad Hoc Agricultural Policy Working  
23 Group: Wade Butler, Bou Carlisle, Margaret Chasson, Jim Clifford, Nancy Dacek, Jane  
24 Evans, R. Scott Fosler, Robert Goldberg, R. Thomas Hoffman, Jim O'Connell, Michael  
25 Rubin, Pam Saul, Drew Stabler, Elizabeth Tolbert, and Billy Willard are the 15 members of  
26 the Working Group. In addition, Elizabeth Tolbert will serve as Chair, R. Scott Fosler will  
27 serve as Vice Chair, and Montgomery County Planning Board Vice Chair, Wendy Perdue,  
28 will serve as an ex officio member and liaison to the Maryland National Capital Park and  
29 Planning Commission. I think this is an excellent list, we easily could have found 15  
30 different excellent people to serve, we had an abundance of excellent people who applied.  
31 But what I will stress now and I will continue to stress and attend meetings of the Working  
32 Group -- probably not meetings, plural, but I'll attend at least one.

33  
34 Councilmember Knapp,  
35 You'll leave that to the Councilmember from District Two?

36  
37 Council President Leventhal,  
38 Well, and the -- Councilmember from District Two, these are delightful people and I'm sure  
39 you'll enjoy meeting with them. Lib Tolbert has offered to host the meetings in her living  
40 room, that may not be feasible, but she's a lovely, lovely lady. My staff and I were treated  
41 to delicious homemade cookies and coffee in her living room. I will urge members of the  
42 working group really to listen to each other. These are 15 individuals, most of whom reside  
43 in the Ag Reserve, some of whom do not but care passionately about the Ag Reserve.  
44 These are 15 individuals who care deeply and love this resource and want to preserve it.  
45 What is so important and what I'm afraid sometime is lacking is the ability on all sides of



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1 complicated issues really to listen to each other and acknowledge that all of us have valid  
2 concerns, valid priorities that need to be addressed and taken into account. And that,  
3 more than anything else, is what I hope will come of this Working Group. We care so  
4 much about the preservation of these 93,000 acres that many of us become emotional  
5 about them and the specific policy tools that we employ today and that we may employ in  
6 the future to preserve this acreage sometimes become the focus of some emotional  
7 discussions and intense disagreements. What's important to me is that all sides know  
8 they've been thoroughly heard. That all sides really listen and make a real effort to  
9 acknowledge the seriousness and the sincerity of everyone's position on these issues. I'm  
10 confident that will occur. I'm confident that Lib Tolbert and Scott Fosler and Wendy  
11 Purdue, and all members are going to assist in bringing that about. I'm very optimistic  
12 about this process and I'm delighted with the cooperation here that Councilmembers have  
13 shown. Thank you very much on Item "J." Any other comments on the Consent Calendar?  
14 If not those in favor of the Consent Calendar will signify by raising their hands. It is  
15 unanimous among those present. We turn now to Legislative Session. Is there a  
16 Legislative Journal for approval?

17  
18 Council Clerk,

19 We have the Legislative Journal of April 4th for approval.

20  
21 Councilmember Andrews,

22 So moved.

23  
24 Councilmember Knapp,

25 Second.

26  
27 Council President Leventhal,

28 Mr. Andrews has moved and Mr. Knapp has seconded approval of the Legislative Journal  
29 for April 4th. Those in favor will significant by raising their hands. It is unanimous among  
30 those present. We have one bill for introduction. It is my bill, cosponsored by Vice  
31 President Praisner and Councilmember Silverman. Buildings energy efficiency and  
32 environmental design. Public hearing has already been scheduled for June 20th at 1:30  
33 p.m. We turn now to Work Session on compensation and benefits. Mr. Farber -- ah,  
34 Justina.

35  
36 Justina Ferber,

37 Yes, before you go to the work session I wanted to make sure you saw Katie Knowlin, our  
38 new Minority Affairs...

39  
40 Council President Leventhal,

41 Hi. Welcome. Looking forward to working with you. Enjoyed reading the article about you  
42 in the "Washington Post." You come highly recommended and you're filling a very  
43 important position as Advisor to the County Executive on business affairs for minority and  
44 other disadvantaged groups and women. And we all feel very strongly here on the Council  
45 about the role that you're fulfilling. We were glad to create the position and look forward



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1 very much to getting to know you and furthering that very important mission. Thank you.  
2 Okay, work session on compensation and benefits.

3  
4 Councilmember Denis,  
5 Yeah, put me in, coach!

6  
7 Council President Leventhal,  
8 That would be Mr. Denis, lead member for Personnel.

9  
10 Councilmember Denis,  
11 Thank you very much. Thank you Mr. President. Also thank you, Ms. Praisner, Chair of  
12 the Management and Fiscal Policy Committee. I'm happy to present as lead member for  
13 Personnel the Council's annual work session and action on compensation and benefits is  
14 always an especially important part of the County budget process. That is because the  
15 salaries and benefits for the active and retired employees of our four tax supported  
16 agencies, County government, Montgomery County Public Schools, Montgomery College,  
17 and Park and Planning account for -- get this -- 79.5%, about 4/5 of their total  
18 expenditures. So clearly personnel costs drive the budget and therefore productivity is  
19 always the key in this area. I want to thank my Chairman, Ms. Praisner, for her initiative in  
20 leading us to endorse a study of gain sharing that might result in additional productivity.  
21 On the Committee's recommendation that is a budget amendment to the County  
22 government portion. The Management and Fiscal Policy Committee held a comprehensive  
23 discussion of these issues on April 17. On April 20, we reconvened to develop our  
24 recommendations to the Council. The Committee unanimously supports the  
25 recommendations I will outline in a moment. Therefore, Mr. President, this will be the  
26 "Cliffs Notes" version this particular year. I want to also commend our staff director, Steve  
27 Farber, for leading our analysis and also for having fully recovered from "Bowel Mal  
28 Syndrome." We're very glad to see you back and we're going to have a benefit for the  
29 victims of Bowel Mals Disease very shortly with a celebrity auction and all the rest. But Mr.  
30 Farber's outstanding team in the Council office includes Chuck Sherer, Amanda White --  
31 and by the way I want to say that Amanda produced a very fascinating and helpful  
32 comparative analysis of these issues for compensation and benefits, looking at Fairfax  
33 County, Arlington County, Frederick County, the state budget, and the federal process as  
34 well. I also want to thank Mike Faden, Kathleen Boucher, Minna Davidson, and Linda  
35 McMillan. Clearly, this indicates that we are in a competitive posture with regards to  
36 compensation and benefits, that I think is made absolutely clear by the comparative  
37 analysis. If we are intent and serious about maintaining and enhancing quality of life, that  
38 simply is not done on the cheap, it's an simple as that. Many excellent professionals from  
39 the departments and agencies also contributed to our work again this year. They include  
40 Joe Adler, Director of Department of Office of -- of Human Resources, his colleagues from  
41 the office and Alex Espinoza and Brady Goldsmith from the Office of Management and  
42 Budget. Marshall Spatz and his colleagues from Montgomery County Public Schools,  
43 Donna Damone and her colleagues from the college, and Trudy Johnson and her  
44 colleagues from Park and Planning. I also want to thank the agency benefits experts who  
45 have worked with us on a wide range of group insurance issues: Eric Walmark from

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1 County government, Wes Gerling from Montgomery County Public Schools, [Linda Von  
2 Bargain] and Karen Glass from the college, [Jan Lar Prock] from Park and Planning, and  
3 Mike Glass from the Washington Suburban Sanitary Commission. In addition to the large  
4 April 17 Committee packet, Councilmembers have seen the extensive appendix that  
5 contains in color very useful data from all agencies on their compensation benefits.. This  
6 was distributed a couple of weeks ago to all Councilmembers, so there are limited hard-  
7 copy versions. It is available online, and I think it's especially useful, just looking through it,  
8 because it is color coded and it's, I hate to say amazingly, but it is an amazingly readable  
9 document for anyone who is interested in these particular issues. There is a late-breaking  
10 item that is covered on the last page of our packet dealing with the General Assembly's  
11 passage of legislation involving teacher's pensions and the numbers are relative to that,  
12 as they may affect us, are now under review. And perhaps when I conclude we can have  
13 a summary of what our status is in reviewing those numbers. For me personally, it's a  
14 revisitation of the subject matter. I was down in the State Senate when the law was  
15 passed in the late '70s and then repassed, again, in the mid-'80s. I was opposed to it at  
16 the time, so-called "Pension Reform," and now we're basically reforming the reform and  
17 getting back on track. And I think a lot of the problems that people saw in the original  
18 pension legislation that was adopted over 20 years ago have come to pass. Also, before I  
19 get into the actual recommendations I think it should be noted generally in this area, as in  
20 all of the our areas, there is a specter haunting state and local government, known as  
21 GASB, the Governmental Accounting Standards Board, and their recommendations go  
22 into effect -- the law goes into effect July 1st of '07. So we've basically -- we've been  
23 leading up to this, basically putting money aside for benefits, and we'll have to put more  
24 and more money aside in years to come. The Genesis is the collapse of pensions in the  
25 private sector. So people started looking at the public sector and said could the same  
26 thing happen in government, and why couldn't it happen? And, indeed, in the Bankruptcy  
27 Code -- the Federal Bankruptcy Code -- there is a provision for Municipal Bankruptcy. It's  
28 seldom used, certainly we're in absolutely no danger here in Montgomery County, with our  
29 gilt-edged, AAA bond rating, but some of our regional neighbors from time-to-time have  
30 been right on the edge. In the District of Columbia, they basically were bankrupt about 11  
31 years ago so I think that -- so this is part of the genesis of GASB, if I can use that  
32 acronym, the Governmental Accounting Standards Board, I think we'll be hearing more  
33 and more of this in the years ahead. On the good news side, we do see. as reflected in  
34 the packet, a \$2 million saving to our County residents from the Montgomery Prescription  
35 Program, our new drug discount card program.. I want to thank Councilmember Tom  
36 Perez and all of those who helped to make that possible. Of course it was an initiative of  
37 the County Council. Moving to the recommendations, just walking through the packet,  
38 you'll see the words "support funding" a lot as we go through the packet. This is basically  
39 what the Committee did for County government and the salary schedules, and all of the  
40 Circles that are referred to with all the numbers and the appendix that I referred to earlier,  
41 the General Salary Schedule for so-called unrepresented, salary schedules for medical  
42 doctors, and for the planning board, for the College, for the schools, for the sanitary  
43 commission, retirement program, also County contribution listed of \$109.9 million and  
44 \$110 million for the RSP. We recommend approval of the budgets of the, the three  
45 retirement plans so far as the County government, compensation-related, non-

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1 departmental accounts, the NDAs. They include the judges' retirement contributions, state  
2 position supplements, state retirement contribution, group insurance for retirees, and  
3 compensation and employee benefits adjustment. The recommendations are approved,  
4 approved, approved. Moving to the group insurance, you see the County government  
5 portion. We support the agency group insurance funding requests for both active  
6 employees and retirees as recommended. The third dot on the bottom of page three under  
7 recommendations is GASB, as I referred to before, and then the reference to the Drug  
8 Discount Program, again, savings to the people of Montgomery County, so far of \$2  
9 million. Under the category of "Other," you always have to watch "Other," but I think we're  
10 okay in this category of "Other," the Employer Awards and the Tuition Assistance  
11 Program, this goes back to the departments rewrite of the Personnel Regs in 2001 that  
12 the Committee played such an extensive role in bringing about. Under the  
13 recommendations you'll see the reference to Gain Sharing that I mentioned up front and to  
14 teacher's pensions. So, Mr. President, that is my presentation and if any colleagues have  
15 comments perhaps they'd be appropriate at this time.

16  
17 Councilmember Praisner,  
18 There are no lights at this time, but -- oh, Mr. Knapp.

19  
20 Councilmember Knapp,  
21 I just wanted to commend the Committee and Ms. Praisner for your discussion on the  
22 concept of gain sharing, I think it's something we've got to take some more time to explore  
23 and I look forward to having that discussion and would appreciate the opportunity to sit  
24 down with the MFP Committee when these recommendations come back. I know there  
25 are lots of alternatives out there in both the public and private sector. But clearly as we  
26 look at how to continue to gain ownership of everyone in the part of County government  
27 and how we meet the needs of our residents, I think this is a great tool for us to look at so  
28 I commend the Committee and Ms. Praisner and Mr. Denis for this discussion and I look  
29 forward to the information that comes forward.

30  
31 Councilmember Praisner,  
32 To the benefit of those who may not have had as much exposure, and it's very limited that  
33 we've had, to the issue of "gain sharing," not an acronym but certainly a word that folks  
34 may not be as familiar with, it is a concept which has whatever is the management part, if  
35 it's private sector or government, developing a program in consultation and partnership  
36 with employees to both identify and share the benefits of any savings and efficiencies in  
37 productivities that are developed by those employees and can be demonstrated as a true  
38 savings over a period of time. The program first came to my attention because of my  
39 friendship and interaction with then County Executive Dutch Ruppersberger of Baltimore  
40 County. They had an excellent gain sharing program. It was not easy to implement,  
41 initially, but proved to be a very effective program under his leadership. He's now in  
42 Congress, and unfortunately, I think the current County Executive has chosen not to  
43 continue the program. We had a briefing in the Management and Fiscal Policy Committee  
44 about that concept several years ago and it stimulated my interest. I've had a series of  
45 conversations with Gino Renne from our County Employees Union about the issue, he too

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1 is as worried as we are about the issues of sustainability of budgets and the need to  
2 identify efficiencies and productivity. He also from an employee perspective shares my  
3 view, the folks who are doing the jobs are often the folks who know best what can be  
4 achieved or what other ways one might approach the function such that you can deliver  
5 the service in a more cost-effective productive manner. So in my conversations with him  
6 and as recently as last night he reaffirmed his interest and I know he's had a conversation  
7 with Mr. Adler about the issue. The resolution that we're suggesting would be added as an  
8 item to the Operating Budget Resolution for the County Government and would urge the  
9 County Executive and MCGEO to bring us option or options for a gain sharing program in  
10 the County by July of 2007. I set that time period because having learned from Mr.  
11 Ruppertsberger it requires careful consultation and consideration to really have an  
12 effective program. You can't impose it by one party in any means. And in addition, given  
13 the challenge of elections, I certainly, while having a continuing body, the Council have  
14 this request, "Sit there," wanted to give time for a new County Executive and bargaining  
15 unit to have a chance to work through these issues without having something of an  
16 unrealistic deadline. So the June/July time period is I think more appropriate for us to be  
17 looking at this issue because of that. I wanted to make one other comment about GASB  
18 and the GASB requirements because we've had some conversation here at the table  
19 during the budget overview, Mr. Farber did an excellent job, but I wanted to make sure  
20 folks understand we have been paying on an ongoing basis. We have not prefunded  
21 though, and therefore from -- and this is healthcare obligations and exposures for retirees  
22 and employees and we're talking about escalating costs, obviously, which make it a  
23 challenge to prefund our exposure on an ongoing basis. It's a requirement that the  
24 Government Accounting Board has had there for implementation for some time. In fact, I  
25 had the -- and I will not say "pleasure" -- but I had the "experience" of testifying before the  
26 GASB Board in Baltimore when they met there several years ago. I want to thank Mr.  
27 Firestein for giving me that opportunity. I say "thanks." When they issued these standards  
28 of requirements for the way one must operate financially and how you account and how  
29 you report, there always is some lead time for the effective date. And the effective date for  
30 large government institutions like Montgomery County and other counties of more  
31 significant magnitude in size, population, and budget is July of '08, which means the '07  
32 time period as far as what your budgets must look like. That requirement has been known  
33 for some time. Fortunately for some jurisdictions, having known about the problem, have  
34 started to set aside some funds for it. Unfortunately for Montgomery County, we have not  
35 done so as yet. Montgomery College, because they already have the account, has been  
36 doing some of that. And the whole issue of when you set up the trust, or if it's a trust, and  
37 how you -- what the implications of creating a trust when you have to report that  
38 information is also a part of other GASB requirements. So I think the taxpayers of this  
39 County will continue to hear about this issue and this obligation because it is not  
40 insignificant. We need to have a new actuarial study done factoring in the questions on  
41 what is the impact of the Medicare Health Prescription Drug Program, but I suspect it's not  
42 going to be as significant a savings as folks might have thought. So stay tuned. Mr.  
43 Leventhal, Mr. Andrews' light is also on.

44  
45 Council President Leventhal,



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1 Mr. Andrews.

2  
3 Councilmember Andrews,

4 Thank you Mr. President. I want to comment on the gain sharing proposal. I think this is a  
5 very promising approach to improving productivity in County government because it  
6 involves, empowers, and rewards employees who help improve the productivity of our  
7 services. And that should be something we should all be interested in. It has been used  
8 successfully in other places and I think it's time to move it forward here. I'm very excited  
9 about this proposal and I think we need to move ahead with it expeditiously.

10  
11 Council President Leventhal,

12 There's an odor of something burning.

13  
14 Councilmember Praisner,

15 Yeah, there is.

16  
17 Council President Leventhal,

18 I wonder whether may be the lights are...

19  
20 Councilmember Denis,

21 Let's get through this item first.

22  
23 [LAUGHTER]

24  
25 Council President Leventhal,

26 All right, let's complete the item. There are no more lights, Mr. Denis.

27  
28 Councilmember Denis,

29 I don't know if I can read that again.

30  
31 Council President Leventhal,

32 Okay, there are no more lights, Mr. Denis.

33  
34 Councilmember Denis,

35 Okay, thank you.

36  
37 Council President Leventhal,

38 So...

39  
40 Councilmember Denis,

41 That's it.

42  
43 Councilmember Praisner,

44 Accept it.



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1 Council President Leventhal,  
2 So the Council accepts the report of the MFP Committee. I guess we need a vote on this?

3  
4 Councilmember Denis,  
5 Do we? No. Do we?

6  
7 Council President Leventhal,  
8 I don't think so.

9  
10 Councilmember Praisner,  
11 No, no. It's just like all the budgets.

12  
13 Council President Leventhal,  
14 Without objection, we have received the report of the MFP Committee. [COUGHING]  
15 Okay, there's a very strong burning smell.

16  
17 Councilmember Denis,  
18 Now we can check.

19  
20 Councilmember Praisner,  
21 I hope Grace can put it out, whatever. Now that we've paid the Fire Department we can...

22  
23 Council President Leventhal,  
24 Yeah.

25  
26 Staff Director,  
27 It's related to Bowel Mal's Disease. Mr. Denis.

28  
29 Councilmember Denis,  
30 Right, Rob Reiner is going to be at that celebrity auction, by the way.

31  
32 Council President Leventhal,  
33 Okay, well, let's precede with briefing on MPDU compliance.

34  
35 Multiple Speakers,  
36 [INAUDIBLE]

37  
38 Council President Leventhal,  
39 Oh it's just the heaters going off. Okay, we understand it's just the heaters going off. Why  
40 are the heaters going off? It's a warm day. He was testing the heaters, turning the heaters  
41 on and off. Okay, nothing to worry about.

42  
43 Councilmember Denis,  
44 Anyone remember Gabriel Heater? Remember Gabriel Heater?



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1 Multiple Speakers,  
2 [INAUDIBLE]

3  
4 Councilmember Denis,  
5 "There's good news tonight," that's what he used to say.

6  
7 Council President Leventhal,  
8 Okay, welcome Ms. Davison, you need to state your name for the Pictron technology.

9  
10 Elizabeth Davison,  
11 Good morning, obviously there are a lot of hot items for you to talk about today. Sorry, I  
12 couldn't resist.

13  
14 Councilmember Praisner,  
15 Okay, Elizabeth, that's yours.

16  
17 Elizabeth Davison,  
18 I'm Elizabeth Davison, I'm Director of the Department of Housing and Community Affairs.  
19 I'm joined by Chris Anderson who is the MPDU administrator and Rose Krasnow, you  
20 know, with the Park and Planning Commission. We're here today to just give you a brief  
21 overview of the sort of activity in our MPDU section. Just as, I'm going to ask Chris to go  
22 over some of the statistics with you, but just as a general update, just about a year ago the  
23 new law went into effect and we've been -- we've put together regulations, we've also had  
24 some of our first experiences with the Alternative Review Committee and first experiences  
25 of implementing some of the new control periods and sale of MPDUs. It was a little bit of a  
26 rocky start on that. Some developments were unable to sell the units, they're caught in the  
27 middle of the their marketing units and one day there's a ten-year control period, the next  
28 day it was 30. So that was a little bit difficult, but I think we're through that experience.  
29 We're also finding that there are a lot of other jurisdictions in this broader metropolitan  
30 region, those sort of outlying jurisdictions, that are -- seem to be very interested in perhaps  
31 adopting an MPDU ordinance. St. Mary's County, Maryland, is actively looking at that.  
32 We've been contacted by several jurisdictions, in Pennsylvania even, about that. There  
33 continues to be a lot of interest in this topic. With that I'll turn it over to Chris to give you  
34 some of the highlights.

35  
36 Chris Anderson,  
37 Good morning. One of the requirements of the new law last year was that we prepare an  
38 annual report. And the law lists several of the categories of information that the Council  
39 requires. Let me state that we tried to address that in the report, but if there is any other  
40 data that is not in the report that you need, if you'd let us know we'll certainly try to get that  
41 for you. I guess the first requirement would be a report on the number of MPDUs that were  
42 approved. And for the purposes of this report we're defining approved as developments  
43 that came in and have an executed agreement to build with the Department of Housing  
44 and Community Affairs. Last year there were 15 new agreements representing  
45 approximately 4,400 market rate, or total units, and approximately 600 MPDUs, for an

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1 MPDU percentage of about 14.2%. To put that in some context, that's almost twice as  
2 many as were approved in 2004. The other statistic we'd like to report to you is the  
3 number of MPDUs built, and for the purposes of the report we're defining those as units  
4 that were offered to the Department to be made available to the MPDU purchasers -- to  
5 HOC and to the MPDU purchasers. There is one error in the memo from the Department,  
6 there are actually 400 MPDUs, exactly 400 MPDUs offered to the Department in calendar  
7 year 2005. Almost evenly split between Rental and For Sale, with actually 208 Rental  
8 MPDUs and 192 For Sale MPDUs. To put that into context, I just checked the database  
9 this morning, which is an ever moving target, but there are currently about 1,100 certificate  
10 holders with a certificate For Sale or For Sale and Rental and approximately 1,800  
11 certificate holders for Rental MPDUs. It's meeting the need, but certainly there's a long  
12 way to go to meet the need for affordable housing that can be addressed under the MPDU  
13 program. I'm going to let Elizabeth talk about the alternative agreements. There were no  
14 new alternative agreements approved during the calendar year, although there were some  
15 revisions made to -- I'm sorry, there were two new ones and two revisions made in the  
16 calendar year. Since the law changed last April though, there have not been any new  
17 alternative agreements requested, although I think we're anticipating a few coming before  
18 the Alternative Review Committee within the next month or so. One of the other areas that  
19 the Council had requested information on is high-rise developments where rents were set  
20 at 70% of median, which is above what is usually set for MPDU rental projects. Usually  
21 they're set at an affordability level of 65% of median. There were no approved offering  
22 agreements at that level, although we have negotiated a few for future delivery in 2008,  
23 the Georgetown Prep, or the Indigo at Jefferson's Crossing high-rise development will  
24 have rent set at that slightly higher income level. Also in the packet there is a report on the  
25 use of funds in the Housing Initiative Fund. It's a little -- this was the first year of this formal  
26 report. It's kind of hard to peg the payments and the expenditures to the exact 12-month  
27 calendar year required by the law, but in the calendar year 2005, there was approximately  
28 \$1.1 million collected in alternative payments from the Wheaton Forest Project and for the  
29 Gallery at White Flint Project. Those funds have been either spent or committed to  
30 projects in Wheaton for the Wheaton Metro site and also for DHCA and the Coalition for  
31 the Homeless to purchase some units at the Gallery at White Flint. With that overview of  
32 statistic, I'll let Elizabeth address the alternative.

33  
34 Elizabeth Davison,

35 I know you're aware of the condominium boom of new construction has been underway for  
36 the last year or two. And the alternative agreements deal with these, for the most part  
37 either high-rise condominiums or extremely expensive condominiums, some of which are  
38 both. The law still allows for units with very high condominium fees to be analyzed to see  
39 whether they're affordable to the MPDU certificate holders and for an alternative to be  
40 made if it's found that they cannot be afforded by the certificate holders. In several of  
41 these cases, the first two that are on this list on Circle Two, there are extremely high  
42 condo fees, over \$1,000 a month because of the luxury nature of those two developments,  
43 one with Canyon Ranch, you may be familiar with. I've never been there, it sounds like  
44 fun, but one of these high-end spas, sort of holistic, and this concept is that you don't just  
45 go for a week, you live the lifestyle. And so the condo fees are, you know, pay for the

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1 membership in that. I believe they were well over \$1,000, perhaps about \$2,000 a month.  
2 So it seemed clear that that was unaffordable to -- I mean even if you gave someone the  
3 unit it would be very hard to afford that. That combined with the rapid increase in  
4 construction costs, especially for steel and concrete. The Quarry also has very high condo  
5 fees. They were \$1,500 a month, similar issue. Park Potomac, or Fortune Park, they have  
6 very high condo fees, they are looking at the possibility of being able to perhaps put some  
7 units over the retail. So, as long as I think we have this condominium boom going, which  
8 I'm sure you've read the papers about the over supply and we're beginning to hear some  
9 murmurings from a few people that they might build rental. But this is still an issue we're  
10 grappling with. The Alternative Review Committee will be, I think there are roughly ten  
11 developments that have requested meetings with us. We're still fine-tuning our  
12 procedures, we've only had one meeting, but we do expect that there will be other  
13 developments that are requesting a review of, particularly condo fees or heights.

14  
15 Council President Leventhal,  
16 So that concludes the presentation?

17  
18 Elizabeth Davison,  
19 Unless have you questions, sure.

20  
21 Council President Leventhal,  
22 I recall when we passed the MPDU revisions, the Executive branch was asked to come  
23 back in a year with -- I offered an amendment which I was not able to persuade my  
24 colleagues of the merits -- that to write down the condo fees in some of these high-end  
25 developments out of the Housing Initiative Fund. And it's all right, you win some, you lose  
26 some, my colleagues didn't go along with that. But after that we had a request to the  
27 Executive Branch that it come back in a year with its approach to eliminating alternative  
28 agreements altogether. Has there been any follow up on that? That was a directive from  
29 the Council more than a year ago.

30  
31 Elizabeth Davison,  
32 I believe that would be scheduled for the fall, wasn't it? I do remember that. I didn't think  
33 that it was part of this report. When we were discussing the various alternatives for the  
34 new law, my suggestion was if you want to eliminate the buyouts that you need to look at  
35 a combination of raising the incomes that you're serving and having several different  
36 programs under one umbrella, which is what is done in Denver -- in the City of Denver.  
37 And there was some discussion about that program, we provided copies of that. One of  
38 the other aspects that they have in Denver and some other areas, Boston, in Boston they  
39 also serve a higher income range, for the most expensive developments, is to provide  
40 some money from a trust fund or something like the Housing Initiative Fund to partly write  
41 down the costs.

42  
43 Council President Leventhal,  
44 That was my proposal. The second one is what I suggested.



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1 Elizabeth Davison,  
2 It's not condo fees, it would be the cost of the unit.

3  
4 Council President Leventhal,  
5 Uh-huh, all right, now let me just...

6  
7 Elizabeth Davison,  
8 Now we are looking into -- in some of the other developments we've been discussing  
9 some shifting of condo fees from the -- having the market rate units pick up a slightly  
10 higher percentage. And that has -- the percentage or the fees, the condo fees has to be  
11 approved by the Secretary of State. We have been working with a couple of developers on  
12 that concept. They haven't gone that far to -- to the Secretary of State. But I think there...

13  
14 Council President Leventhal,  
15 Each building must submit its condo fees for approval to the Secretary of State? Yes, I  
16 think Mr. Silverman can give you...

17  
18 Councilmember Silverman,  
19 They have to present their documents...

20  
21 Councilmember Praisner,  
22 ...accepted or rejected.

23  
24 Council President Leventhal,  
25 If you want to speak could you turn your mic on?

26  
27 Councilmember Silverman,  
28 Yes, they have to be submitted to the Secretary of State, the entire set of documents with  
29 what they say. Now, having said that, it doesn't sound like the issue's gotten joined, but  
30 there's nothing under Maryland law that prevents a condominium developer, prior to the  
31 time any units are sold, from producing a set of documents that says that the condo fees  
32 for MPDUs will be "X" and the condo fees for everybody else will be "Y." In fact, condo  
33 documents which have condominium fees based on square footage of units are quite  
34 common, so they set up disparities there. But I had looked into this issue a year ago.  
35 Which is why I didn't support your proposal, Mr. Leventhal, because there is a remedy and  
36 the remedy is to shift the burden of high condo fees onto the market rate units. It's a math  
37 equation to figure out what the market rate units would have to absorb for a, what I'll just  
38 call a "reasonable" condo fee for an MPDU. But there's nothing that legally prohibits...

39  
40 Elizabeth Davison,  
41 I think this gets down to the core issue, it depends how much your shifting. Obviously it's  
42 always in the eye of the beholder. But some, if you basically have a 12.5% requirement,  
43 you've got seven market rate to every one MPDU. If you have the case where these  
44 condo fees are \$1,500, \$2,000 a month, that means you would have to shift \$200 plus  
45 dollars to a market rate unit. I think there would be very difficult for -- in my opinion to



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1 justify that I think there'd be an awful lot of market resistance and push back if people did  
2 buy that, because the condo fees are something that people look at carefully when they're  
3 choosing between developments.

4  
5 Council President Leventhal,  
6 What was the date on which we passed the MPDU Reform law.

7  
8 Unidentified Speaker,  
9 [INAUDIBLE]

10  
11 Elizabeth Davison,  
12 It took -- it took...

13  
14 Council President Leventhal,  
15 I appreciate the answer from our audience and it's very well taken. Could I get the answer  
16 from our staff? What was the date on which we passed the MPDU Reform law?

17  
18 Elizabeth Davison,  
19 It was the fall, it was like November...

20  
21 Council President Leventhal,  
22 Of 2004.

23  
24 Elizabeth Davison,  
25 But it didn't take effect until April 1.

26  
27 Councilmember Silverman,  
28 April, 2005. So it's been in effect for a year.

29  
30 Elizabeth Davison,  
31 So it's been just about a year.

32  
33 Council President Leventhal,  
34 So the request that DHCA come back to us in a year is being interpreted as a year from  
35 the effective date of the law, not the Council passage of the law.

36  
37 Elizabeth Davison,  
38 Yes.

39  
40 Council President Leventhal,  
41 Okay, so we'll look forward to hearing back from DHCA soon with proposals to eliminate  
42 alternative agreements.

43  
44 Elizabeth Davison,  
45 Well, and they're what I'm going over with you right now verbally.

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1  
2 Council President Leventhal,  
3 You're not sounding very optimistic that either of them will work, though. I mean I hear  
4 what you're going over, you're saying there'll be market push back...

5  
6 Elizabeth Davison,  
7 I'm optimistic they will work, I'm just not sure that's what you want to do because we  
8 proposed those things back when we were discussing the changes to the law. The Denver  
9 model does seem to work. These are things that other jurisdictions are doing. So they're  
10 not "pie in the sky" kinds of things. It's just has not been something that the Council has  
11 jumped on, that that's the direction they wanted to go in, at least during those discussions.

12  
13 Council President Leventhal,  
14 I'm reluctant to ask, but this full living environment at Canyon Ridge?

15  
16 Elizabeth Davison,  
17 Yeah?

18  
19 Council President Leventhal,  
20 Do you think that developers may be embarking on some of these amusement park rides  
21 in the building in order to keep MPDUs out?

22  
23 Elizabeth Davison,  
24 I don't think so, because they're putting -- some of the MPDUs are within the development.  
25 There's like one building that's going to have this "Canyon Ranch" experience. They would  
26 be put in some of the other buildings.

27  
28 Council President Leventhal,  
29 Do we see this as a trend, that these alternative lifestyle experiments that will create this  
30 exclusive environment in which MPDUs are totally unaffordable?

31  
32 Elizabeth Davison,  
33 Who knows? Who knows? I don't know. I would think that the market for that would be  
34 rather limited due to its expense.

35  
36 Council President Leventhal,  
37 Could you just give us a few -- a sentence describing "that"? What is the Canyon Ridge  
38 lifestyle experience?

39  
40 Elizabeth Davison,  
41 Again, I haven't been there because I can't afford it. But it's the idea, at least there are  
42 spas that you go to for a week, you have a mud baths, you have yoga, you have diet and  
43 health, you meditate....

44  
45 Council President Leventhal,



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1 So with these you can have a mud bath every day, twice a day.

2  
3 Elizabeth Davison,  
4 ...personal trainers, diet advice, exercise advise, all sorts of things. I don't -- I haven't been  
5 there.

6  
7 Council President Leventhal,  
8 So this is 365/24/7?

9  
10 Elizabeth Davison,  
11 Right, and you have a huge...

12  
13 Council President Leventhal,  
14 Mud baths all the time, you're constantly in a mud bath!

15  
16 Elizabeth Davison,  
17 ...spa in there.

18  
19 Councilmember Praisner,  
20 It's like the dead sea over and over.

21  
22 Councilmember Andrews,  
23 It's a mud bath, but it's not dirt cheap.

24  
25 Council President Leventhal,  
26 Well, it's an interesting...

27  
28 [LAUGHTER]

29  
30 Elizabeth Davison,  
31 You can go on their website and you can see that they -- now they've had these lifetime  
32 experiences. I think there's one in Florida and one in Colorado, but they are extremely  
33 expensive.

34  
35 Council President Leventhal,  
36 Sounds like a creative MPDU avoidance strategy. I hope that Ms. Praisner will raise -- I  
37 know her light is on -- the issues she brought to my attention regarding Bonifant Park and  
38 certain design standard issues. I'll yield first to Chairman Silverman, he's had his light on. I  
39 see Ms. Praisner has her light on, I'm very interested in that issue but I'll let her ask the  
40 question. Mr. Silverman.

41  
42 Councilmember Silverman,  
43 Thank you Mr. President, I've got a series of questions, which if you can answer now,  
44 that's fine, otherwise I'd like to get an answer back from the Department. Let's start with  
45 the Canyon Ridge. I was trying to understand, and I'm a little unclear. The two buildings,



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1 I'm looking at Circle Two, the two buildings contain 217 condos each, and then part of this  
2 package is they'll be another building that will have 107 rental MPDUs.

3  
4 Elizabeth Davison,  
5 Yes, there's...

6  
7 Councilmember Silverman,  
8 That's all MPDUs?

9  
10 Elizabeth Davison,  
11 No.

12  
13 Councilmember Silverman,  
14 Let me try it a different way. Are there four hundred -- how many condominium/apartments  
15 are there in the project? How many MPDUs would be required?

16  
17 Elizabeth Davison,  
18 There are 1,246 units total. The MPDUs are 225. Which is 18.1%.

19  
20 Councilmember Silverman,  
21 Okay.

22  
23 Elizabeth Davison,  
24 The two high-rise buildings have 217 units each, then there is a mixed use building which  
25 is going to be retail with housing over it. That has 426 units and a little over 100 would be  
26 MPDUs.

27  
28 Council President Leventhal,  
29 Maybe I'm missing something here.

30  
31 Elizabeth Davison,  
32 There's another building with 386 units, an apartment complex and that has 70 MPDUs.

33  
34 Councilmember Silverman,  
35 I'm sorry?

36  
37 Elizabeth Davison,  
38 70 MPDUs.

39  
40 Councilmember Silverman,  
41 So there's 107 in one, 70 in another.

42  
43 Elizabeth Davison,  
44 And there's an alternative payment of 48.



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Councilmember Silverman,  
Okay, why is there an agreement to do an alternative payment for 48 units, and then second of all, how did the price get set at \$33,000 even?

Elizabeth Davison,  
The payment is because we were shifting some units out of the high-rises to the mixed use building. But we also had an agreement they would make a payment because of this very expensive condo fees and not wanting to have an over concentration of MPDUs in the mixed use building.

Councilmember Silverman,  
I'm sorry, the mixed use building that has 107 rental units in it, how many total units are there?

Elizabeth Davison,  
426.

Councilmember Silverman,  
426; and the other one that's got 70 in it, how many in that building?

Elizabeth Davison,  
386.

Councilmember Silverman,  
I'm sorry?

Elizabeth Davison,  
386; so it still is going to have well over the 12.5 percent.

Councilmember Silverman,  
I know, I guess I just have to ask why they couldn't have put the 48 units in either one of these buildings. I'm not sure what the definition...

Elizabeth Davison,  
Which buildings?

Councilmember Silverman,  
You've got a building that's got 386 units of which 70 are going to be MPDUs. You've got another building of 426 that will have 107 MPDUs in it.

Elizabeth Davison,  
The first building was already constructed. The Canyon Ranch issue came up...

Councilmember Silverman,  
Wait, wait, wait, which buildings? There's already a building that's been constructed?

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1  
2 Chris Anderson,  
3 Right the Avalon at Rock Spring apartment community there, that's the building that has  
4 386 units and 70 MPDUs in it, and that's complete.

5  
6 Councilmember Silverman,  
7 Okay, and that's all right. And so the next one hadn't been built yet, that's the 426.

8  
9 Elizabeth Davison,  
10 That's the mixed use building and the others -- that's rental. The others are the high-rise  
11 condos and that was where the...

12  
13 Councilmember Silverman,  
14 No, I understand, so I guess the question is, has someone made a determination that you  
15 can only have 107 rental MPDUs out of the 426 in this mixed use building as opposed to  
16 155 out of 426?

17  
18 Elizabeth Davison,  
19 We were looking at the issue of rental and condominium and it seemed that the buyout  
20 was appropriate for developments that had high condo fees.

21  
22 Councilmember Silverman,  
23 But I thought -- okay, we start with the premise that we don't want to have buyouts, at  
24 least that's the premise that I start with.

25  
26 Elizabeth Davison,  
27 This was negotiated. There are several discreet buildings and the Canyon Ranch thing  
28 came in the middle. So this wasn't just all looked at once. It was over a period of a couple  
29 of years.

30  
31 Councilmember Silverman,  
32 I'm just trying to understand why...

33  
34 Elizabeth Davison,  
35 This was originally negotiated before the law was changed. It seems to me that if you  
36 have in the law that you can have buy buyouts when have you high condo fees, that  
37 perhaps you aren't starting from saying that you don't want any buyouts it seems you've  
38 specified under which conditions they're appropriate after reviewing documentation and  
39 information from the developer.

40  
41 Councilmember Silverman,  
42 Well, first of all, the agreement that is referenced on Circle Two was executed after we  
43 passed the legislation but before the effective date. Second of all, I raised the question of  
44 why the agreement couldn't have provided for a higher number of rental MPDUs in the

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1 mixed use building? There's 426 units. Someone made the decision that 107 was the  
2 magic figure instead of 155.

3  
4 Elizabeth Davison,

5 Right, and anybody that you ask would probably make a different decision. People make  
6 different decisions, the law has now been changed where this will be made by panel of  
7 three people, so there is going to be more input on that. But when the law -- when this was  
8 enacted, we went through a very extensive amount of information from the developer. We  
9 looked at the financial feasibility of it, we got information about condo fees, we got  
10 extensive reports on construction costs, we got reports on the market. So we reviewed a  
11 very large amount of information. The staff and I together and we had a consultant look at  
12 this information and this was the determination.

13  
14 Councilmember Silverman,

15 Well, how was -- Let's move to the next point, how was a determination that \$33,000 per  
16 unit was the appropriate figure?

17  
18 Elizabeth Davison,

19 It was based on the land cost, which is, as you remember a few years ago, I went through  
20 the memorandum of our methodology about that and the idea that what your getting with  
21 an MPDU is the cost of the land. That was sort of memorialized into the new law also. It  
22 was expressed as a percentage of the sales price, but the rational was that it was the  
23 value of the land.

24  
25 Councilmember Silverman,

26 I'd like to see the paperwork that gets you to \$33,000.

27  
28 Elizabeth Davison,

29 I would have to go through our file.

30  
31 Councilmember Silverman,

32 In connection with the Quarry, what is the time line for this? Am I correct that this project is  
33 under construction?

34  
35 Elizabeth Davison,

36 I don't know. Chris, do you have that information?

37  
38 Councilmember Silverman,

39 The Circle Two says there's an option of either paying \$1.7 million, which is basically a  
40 little over \$1,000 a unit, or providing 15 off-site MPDUs. So what does the agreement say  
41 in terms of the time line?

42  
43 Rose Krasnow,

44 We just approved that a site plan a month ago, so I doubt it's under construction yet,  
45 although it will be soon.

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Councilmember Silverman,

Okay, but the agreement that's executed March 25th, does it specify a time line for a decision being made about either the contribution or the off-site MPDUs? It says six months within completing phase one, so what's the date on that? Is there a date?

Elizabeth Davison,

We don't really -- when something comes to us early on, well before it's gone through Park and Planning and got site plan, we would only have a guess as to when that would be. So since is really has only just been approved by Park and Planning...

Councilmember Silverman,

Okay, so let me ask this, what's the mechanism within either Park and Planning, DPS, or DHCA to track when construction starts and when the decision is made? I'm not looking at the agreement, I'm looking at your letter. It says "The developer must select one of the alternative methods within six months of completing Phase One of the project." So that tells me there's gotta be -- that there's a trigger point. The first trigger point is the developer selecting either the payment or the provision of off-site. So what's the method for tracking when that's going to occur? And then what is the method for compliance with either the payment or the provision of off-site MPDUs? In other words do they just have to choose which method they want to use at the end of Phase One, or is there a time certain for completion of either the payment or the providing of the off-site MPDUs?

Elizabeth Davison,

Well, at the point that they made the determination we would further refine the time line of that. But when they were -- when we discussed this, they were looking at those two alternatives and I believe they were trying to find another site in the planning area to locate the units. So that was, I think, what they were hoping to be able to do, but it was dependent on their being able to find the land.

Councilmember Silverman,

What's the -- what's the method within DHCA for tracking -- for tracking this, now that there's an agreement?

Elizabeth Davison,

Before they can get a building permit, they have to have a signed agreement with us. DPS has asked for that. We're also getting reports and we're keyed into DPS' Permitting System, and we track -- we're tracking those on a regular basis.

Chris Anderson,

Right, we get monthly reports now from DPS and we're in contact with them on all projects that have MPDUs and the status of the permitting.

Councilmember Silverman,

In terms of Park Potomac, what are the condo fees?

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Elizabeth Davison,  
Let me look at the files for those.

Councilmember Silverman,  
Was there a -- were there height issues at Park Potomac?

Elizabeth Davison,  
I don't know. I think Park and Planning...

Councilmember Silverman,  
What I'm asking is we've created -- and I know this agreement was executed the day before, it looks like, the effective date of the legislation, March 31st. I believe the legislation went into effect April 1st. I guess -- and the legislation that we passed provided height flexibility, as long as it wasn't exceeding the zone. So my question is were there height related issues at Park Potomac that if...

Elizabeth Davison,  
I don't remember those. I believe it was a combination of the high construction costs and the high condo fees for those units.

Rose Krasnow,  
The answer to your question is that they have changed the structure of the buildings from what was originally approved at Park and Planning, where they were going to have one ten-story -- it actually looks like two buildings, but it's officially one building. And then they were going to have two four-story buildings. They came into us some time ago for an amendment to change those two four-story buildings to the same height as the one approved building. And that goes before the board, I believe it's next Thursday. So that hasn't even been approved yet.

Councilmember Silverman,  
Okay, so how -- how high will that -- how many stories will that be?

Rose Krasnow,  
They will all be -- well, two of them will be ten stories, one of them will be eight stories, because we're stepping it down, that's what staff's recommendation is. It's the same number of units, I should add, so the units didn't change, the size changed.

Councilmember Silverman,  
Chris, do you have the condo fees there?

Chris Anderson,  
We will have to get that for you, I don't have it...

Councilmember Silverman,



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1 Here's what I don't understand. If the condo fees are too high for -- you've got 61 MPDUs  
2 that are required in the buildings. Apparently there are going to be 30 that are going to be  
3 provided on-site. That means they're going to be in the buildings.

4  
5 Elizabeth Davison,

6 There are lots of different buildings. There are lots of different buildings and some --  
7 they're different heights.

8  
9 Councilmember Silverman,

10 They're going to be paying condo fees, so how does...

11  
12 Elizabeth Davison,

13 But they're different. They're not one condo association, there are several different ones.

14  
15 Councilmember Silverman,

16 Is that the case now that there's a revised plan? Was that going to be the case now?

17 Sounds like there's going to be a combination.

18  
19 Chris Anderson,

20 When we priced the units...

21  
22 Elizabeth Davison,

23 Turn on your mic.

24  
25 Chris Anderson,

26 When we priced the units at the time that the units are offered, we use an affordability  
27 model, what a person at our maximum income level could afford. And we build in the  
28 existing condo fee into that equation and come up -- generate a number -- an end number  
29 of the maximum amount that a MPDU could sell for and still be affordable to somebody  
30 earning our maximum income. So they will -- using that equation now at our maximum  
31 incomes, and we use fairly conservative inputs into that in terms of financing and things  
32 like that, we come up with a unit cost of around 170 to \$185,000. That's the maximum  
33 they're going to be able to charge for these units that are on-site, and that's with the condo  
34 fee built into it. I don't know what you mean with, "that's with the condo fee built into it"  
35 means

36  
37 Elizabeth Davison,

38 Well, we look at the affordability. There's a maximum dollar amount, which is mortgage  
39 plus condo fees.

40  
41 Councilmember Silverman,

42 Units are being marketed at \$180,000, but they have to pay a condo fee. The condo fee is  
43 whatever the condo fee is. So is it different for these MPDUs than for anybody else?

44  
45 Chris Anderson,



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1 No, not in this particular case where they are actually integrated into the building.

2  
3 Councilmember Silverman,

4 Then I would fundamentally raise the question of why there's an alternative agreement  
5 being reached? You have you somebody who's going back into changing their product. So  
6 why wouldn't we be revisiting this issue of whether, in light of what they now want to build,  
7 that instead of there being an alternative payment that, in fact, they provide the units.

8  
9 Elizabeth Davison,

10 We expect to have further discussions with them, because they're looking at revising the  
11 site plan, and were at least posing some options. I expect we will have a discussion with  
12 them about that.

13  
14 Councilmember Silverman,

15 All right, it would seems as though we have a fair amount of leverage at this point since  
16 the issue is before the Planning Board. To the extend they want to -- they're going to be  
17 back into some negotiations, I would encourage you to review this. The goal, I believe, of  
18 this Council is to ensure, in as many cases as possible, with the exception being truly the  
19 exception, that MPDUs are provided on-site. So I would encourage to you take another  
20 look at that. Rose?

21  
22 Rose Krasnow,

23 I just wanted to add some comments because I see it from a somewhat different view, and  
24 it's been interesting over, let's say the last year. There is no question that as apartments  
25 have changed to condominiums it has caused some real difficulties for the MPDU  
26 program. I think the best thing about the new law is that the whole Committee now has to  
27 review these alternative agreements. And there's no question that the price will be higher.  
28 And I think you can see, from the timing of some of these that people were trying to beat  
29 it. But what I have seen just recently is, and you see that there is a gap after the new law  
30 came into effect, where people didn't know how to react and no one was coming to us  
31 about alternative agreements. And now suddenly, I met with two different developers last  
32 week who had gone through project and preliminary plan promising to build these units  
33 on-site, and now they're very concerned because they're coming up with condo fees  
34 around \$700 and they feel that as they go forward to site plan, they have to say to the  
35 Board, "We're going to be looking for an alternative agreement." Now, the price would be  
36 higher, but until you have some sort of program where you're buying down condo fees I  
37 don't know how you...

38  
39 Councilmember Silverman,

40 I'm not sure we need a program. The law in Maryland is very clear. It allows developers,  
41 when they're creating condominium units, to be able to set market rate unit condo fees at  
42 a higher rate. The question is the math. I've done the math, I did the math a year ago.  
43 Somebody who has got to pay a thousand bucks a month may have to pay \$1,100 a  
44 month. They're either going to buy in the unit or they're not. And, you know what,  
45 everybody is going to be on the same playing field, because the \$1,000 a month, \$700 a

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1 month condo fees a unit in Building "A" are going to be the same in Building "B," if they're  
2 providing the same services. So you're either going to be paying \$1,100 here or you'll be  
3 paying \$1,100 here. I will just make this statement, because I don't know any other way to  
4 make it clearer, is that I hope we are not going to see exemptions to the MPDU ordinance  
5 approved by this Committee based on the issue of condo fees, without the Committee --  
6 without this arc coming to at least the Planning, Housing, and Economic Development  
7 Committee to advise us of what these challenges are. You know, if we had known about  
8 this issue of alternatives in terms of height issues, we would have changed the law years  
9 ago. But that was never presented to us as a challenge. I don't want to pick up the paper  
10 and read about this. Let me ask about Grosvenor, and I apologize for taking up so much  
11 time..

12  
13 Council President Leventhal,  
14 There's no need to apologize, Mr. Chairman, but could I just chime in on that point.

15  
16 Councilmember Silverman,  
17 Sure.

18  
19 Council President Leventhal,  
20 I want to thank Elizabeth Davison. A few months ago when we were in conversation about  
21 condo conversion, and Ms. Davison, at my request, agreed to notify the Council each time  
22 a condo conversion application was filed so that the Council can have productive and  
23 constructive conversations with DHCA about the administration's approach to each  
24 situation. And there may be some emergency needs for, who knows what, special  
25 appropriations, all kinds of situations might arise where the Council's participation in the  
26 conversation could be fruitful. And so, at my request, Elizabeth has agreed to notify the  
27 Council each time a condo conversion application is received. It sounds like what you're  
28 suggesting, Mr. Chairman, if I'm understanding it correctly, and I'd like to just go ahead  
29 and make the same request now, is that each time a request is received for an alternative  
30 agreement, that similarly, and we appreciate DHCA working with us on this, the  
31 Department notify the Council so that we can constructively participate in analyzing  
32 different approaches. It may be that legislation may be necessary to accomplish the goal  
33 that we all share, which is to provide housing for people who need it and can't afford it.

34  
35 Councilmember Silverman,  
36 All right, on Grosvenor Village, this says that there is an alternative payment that's been --  
37 I guess there's an executed agreement. What is the issue with regard to high construction  
38 costs making it economically infeasible? Again, I guess I would ask, in terms of this  
39 building, is there -- was there a height restriction in the zone in connection with this  
40 building? Because the -- if there's an economic infeasibility that's supposed to be a trigger  
41 mechanism for the -- when the law went into effect to be able provide opportunities for  
42 considering height changes. So I'm trying to understand what the basis was for the  
43 alternative payment agreement.

44  
45 Elizabeth Davison,

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1 This was -- it was they've gone from rental to condominium. And, again, it's adding the  
2 condo fee with the high construction costs.

3  
4 Councilmember Silverman,

5 What's the -- okay, there's no reference to condo fee here, so what's the -- I'd like to get  
6 information about the condo fee on this as well.

7  
8 Elizabeth Davison,

9 We'd have to go through the files.

10  
11 Councilmember Silverman,

12 Is there a -- is there another time that -- this project, I gather they have not -- they have or  
13 they haven't broken ground on this?

14  
15 Rose Krasnow,

16 I don't know the answer to that because this one occurred really before I even started at  
17 Park and Planning. So I don't know where it is right now.

18  
19 Councilmember Silverman,

20 Well, I'd like to just -- I guess what I'd like to find out, if not now then soon, is whether  
21 there is going to be another time in which the developer is going to be coming back to  
22 either Park and Planning or to the Department to review, for additional discussions about  
23 alternative agreements versus units. So, if you could get back to me, I'd appreciate it. I  
24 have just a couple of more questions, Mr. President, which have to with updates on  
25 existing projects. We have attached in our packet correspondence to me starting on Circle  
26 14 about a series of projects. And then there is a letter dated January of '06, which  
27 apparently was sent to the Civic Federation, but no one on the Council was copied on this.  
28 So I want an update on this. Could you tell us what the status of Kings Crossing  
29 development is?

30  
31 Chris Anderson,

32 Yeah, I have the offering agreement for those units, 102 units, which I am reviewing right  
33 now and hope to have approved by the end of the week. And that will initiate the offering  
34 to HOC and will initiate the lottery process, which should be held within six weeks.

35  
36 Councilmember Silverman,

37 Okay, and is this entire, this is 102 units?

38  
39 Chris Anderson,

40 Yes.

41  
42 Councilmember Silverman,

43 And this is all...

44  
45 Elizabeth Davison,



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1 They're all MPDUs.

2  
3 Councilmember Silverman,  
4 All MPDUs? All focused on, on seniors?

5  
6 Chris Anderson,  
7 Yes.

8  
9 Elizabeth Davison,  
10 It's been a priority marketing to seniors.

11  
12 Councilmember Silverman,  
13 Okay, and is there a time line for construction?

14  
15 Chris Anderson,  
16 The first building within a year, the second building within 18 months.

17  
18 Councilmember Silverman,  
19 Okay, I would appreciate it if you could provide a copy of the agreement to the Council.

20  
21 Elizabeth Davison,  
22 Sure.

23  
24 Councilmember Silverman,  
25 What is the status of the Regency at Leisure World?

26  
27 Chris Anderson,  
28 The lottery for those new construction -- the 12 new construction units, the offering  
29 agreement was signed on March 9th.

30  
31 Councilmember Silverman,  
32 March 9th of this year?

33  
34 Chris Anderson,  
35 Right, the offering, and the lottery will be held this Friday, the 27th of April. The  
36 construction of the units is 75, about 75% complete. So they should be ready by June,  
37 we're estimating a June delivery date on those. Of the six off-site units, the developer has  
38 identified side contracts on four of the six units and is actively seeking the other two. And  
39 we've inspected the units and are working out the pricing on those.

40  
41 Elizabeth Davison,  
42 Some rehab, too. There's some rehab involved.

43  
44 Councilmember Silverman,

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1 I would appreciate it if you would provide a copy of the agreement. And, I would request --  
2 I don't know if you want this, Mr. President, or not -- but I would request that you provide to  
3 the PHED Committee -- if you want it to go to the full Council, we can -- not only copies of  
4 the agreement, but I'm just going to tick off these others here, in connection with all of  
5 these projects that are contained in the January 31 letter, I would appreciate having -- and  
6 if you want it to go to the full Council -- go to the full Council, a copy of every piece of  
7 correspondence that is generated to and from your offices, meaning Park and Planning or  
8 Department of Housing and Community Affairs in connection with these issues, because it  
9 seems that we don't know contemporaneously what is going on unless we're submitting  
10 requests for information. I would appreciate if you provided that. What is the status of  
11 Layhill Village East?

12  
13 Chris Anderson,  
14 HOC and the developer have signed a regulatory agreement on that and they...

15  
16 Elizabeth Davison,  
17 Again, those are not MPDUs, they're AGP units, so they're -- HOC is the regulator, we're  
18 not.

19  
20 Councilmember Silverman,  
21 Okay, I will talk to -- is anyone from HOC here? I will talk to HOC directly. Okay, Bethesda  
22 Crest, what is the status of that?

23  
24 Chris Anderson,  
25 The MPDUs are under construction there, the foundations are completed and scheduled,  
26 the units are scheduled to be completed by July of 2006.

27  
28 Councilmember Silverman,  
29 Appreciate if we could get a copy of that agreement as well. Edgemore, I know, is a zone -  
30 - if I understand correctly, is a zoning matter, so we can't discuss that. I think that covers  
31 all of them. Thank you very much.

32  
33 Council President Leventhal,  
34 Vice President Praisner.

35  
36 Councilmember Praisner,  
37 Thank you, thank you very much. It's obvious that this is a complicated issue; however, it's  
38 also obvious that as Mr. Silverman said that this Council is very anxious to see MPDU  
39 units in the ground with each development where there is a expectation based on the  
40 numbers and the requirements of the law that MPDUs will be built. I share and would have  
41 requested similar requests to Mr. Silverman's questions. I would appreciate, Mr. Silverman  
42 at the PHED Committee work session regarding MPDUs that we could have a follow-up --  
43 he's not at the table right now -- a follow-up on this conversation and have an opportunity  
44 to get into, further this discussion. It would be helpful for us, I think, to take a couple of the  
45 developments and look at the way they were marketed and what actually were the prices

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1 of the units when they were sold. Such that we could understand, the difference between  
2 the calculations that are used to determine the lack of pricing capacity, et cetera, or the  
3 costs that make it prohibitive to build MPDUs and then we find out what the profit  
4 differences are. So, I think it would be helpful for us to have that information. One of the  
5 units for which I would like to see that information, and I know it varies based on our  
6 conversations on workforce housing, varies very much depending upon when the land is  
7 purchased and whether you are talking about stick construction or whether you're talking  
8 about a higher -- above four floors and, therefore, higher construction costs. Or at least  
9 that's what we have been told. But Mr. Silverman is absolutely correct about the condo  
10 fees and what can happen before the condo fee process has worked its way through and I  
11 think I am from Missouri on this issue. I really want to see a place where units are not sold  
12 because the condo fees are so high, such that we have two exclusive luxury  
13 developments being built that it just is over the top as far as Montgomery County possible  
14 residents are concerned, future or existing. Once I see that, then I might be of the mind  
15 that, yes, we're pricing the luxury apartment, luxury unit over the capacity of folks. And that  
16 relates to Mr. Silverman's comments about condo fees and the difference between the  
17 \$1,000 and \$1,100 or \$1,200 as a monthly condo fee for folks who will enjoy the luxury of  
18 a spa or a mud bath every night when they get home from work. I also am concerned  
19 about the geography of where these developments appear to be coming to us. So, from  
20 my perspective, it's something that I have always been concerned about. And I think I  
21 would like to see our GIS technology to be able to track this information from a standpoint  
22 of the developments being reviewed and where waivers and buyouts or other modifications  
23 are made. I know these are complicated issues, as I said. The issue that has frustrated  
24 me, and it's not really the discussion for today, but I -- I want to thank Linda McMillan for  
25 incorporating it in the packet such that it identifies my request for the PHED Committee to  
26 hold a work session about the requirements for design and other elements and  
27 expectations about how MPDU units look and where MPDU units are placed within a  
28 development. The one that has frustrated me the most and I -- please, the world don't go  
29 visit -- because I don't want to have my constituents overrun in a very narrow street, but  
30 the frustration I have is with Bonifant Park, which is a narrow, single family-appearing  
31 development of a small number of units, but the end of the road at the cul-de-sac, virtual  
32 cul-de-sac, is where all the MPDU units are placed. Up the cul-de-sac, which turns out to  
33 be a private road not a County road and, therefore the question of maintenance raises, so  
34 the issues I want to discuss at this meeting are design. I want to know what the  
35 implications of the fact that this driveway -- lengthy driveway -- to the MPDU units appears  
36 to be a private road, not a County road and, therefore, is not maintained by DPWT.  
37 Lighting, street lighting in that area. How folks could have signed off on street lighting  
38 where there is inadequate lighting in that area where the MPDU units are. And because It  
39 is a private road there are no DPWT obligations to install street lights. And I want to  
40 understand how -- what the obligations are of out of all the home owners for that  
41 maintenance in that area when a significant amount of the maintenance is obviously  
42 associated -- if it's accurate -- as a private road, with the portion that is private, which all  
43 associated with the MPDUs, not with the rest of the development and how that must  
44 engender a warm sense of community among all the residents, really makes me wonder.  
45 So, that's my poster child for what we're doing wrong in this County right now. And I also



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1 want to look at the actual costs, as I said, because Mr. Silverman, again, were he here,  
2 would probably comment again with me about the pricing of the Seton Square  
3 Townhouses and how they have gone up significantly, such that I wonder what the  
4 difference between the original cost and the sales price, the actual sales price, and Park  
5 and Planning staff has been able to provide that information, not necessarily as a  
6 discussion of MPDUs, but as a discussion in our workforce housing conversations about  
7 how we have been using fixed prices as calculations for whether something is affordable  
8 or not. Yet, every unit that appears to be actually sold is much higher than the fixed price  
9 unit cost we're generally using to make assumptions about affordability and marketability.  
10 So, I will not prolong the conversation further. Suffice it to say they believe we have not  
11 yet cracked all of the concerns and issues, which this Council has articulated and which  
12 has been re-enforced by advocates for affordable housing within this County that are not  
13 necessarily doing as much as we can with what is coming before us. And that more can  
14 be done to monitor and more can be done from a standpoint of data such that we do not  
15 draw conclusions of inability to provide -- that maybe the first blush judgment. I recognize  
16 that condominium fees and the costs may make some things more problematic. But, as  
17 we provided in the PHED Committee and the full Council, latitude for adjustment in the  
18 average income levels with some of the -- some of the projects or developments, such  
19 that you are at the higher end of what would be acceptable, affordable income levels and  
20 out of the lower end, I still am troubled that we have more work to do, as I do, in this area.  
21 I believe Mr. Knapp was next.

22  
23 Council President Leventhal,

24 Yeah, Mr. Knapp has had his light on. Before I call on him I just want to say that the  
25 Council Vice President brought to my attention the situation in Bonifant Park and I drove it  
26 also and share her concern for my mutual constituents that we not have a caravan of  
27 people touring the street, but the questions that she asks, she mentioned the design  
28 issue, the road maintenance issue, the street light issue, and these are questions for  
29 DHCA as well as for Park and Planning. If we could get a unified set of answers back from  
30 both. What struck me the most was not, although I appreciate her point about the road  
31 maintenance and the lighting, what struck me the most was the units are conspicuous.  
32 The MPDUs are conspicuous. If you drive down the streets, you know which are the low-  
33 income residents or moderate-income residents. And I don't think that's the model that we  
34 want to pursue in other subdivision developments. If we could have an analysis of that.  
35 And then how do we -- maybe the agencies don't agree that it's an unfortunate model, but  
36 I think it's unfortunate and I agree with her point about it.

37  
38 Elizabeth Davison,

39 I believe some of the units are AGP units, and HOC controls those as well.

40  
41 Council President Leventhal,

42 Well, whatever agencies...

43  
44 Councilmember Praisner,



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1 Whomever, I think HOC needs to be at the table, Park and Planning needs to be at the  
2 table and DHCA.

3  
4 Council President Leventhal,  
5 Even if controlled by HOC, presumably they were constructed under the developer's  
6 MPDU obligation.

7  
8 Elizabeth Davison,  
9 No, they're under an AGP obligation with HOC.

10  
11 Councilmember Praisner,  
12 The AGP obligation is for affordable housing, which is the way the developer got into,  
13 allowed to be -- to develop in an area that was in moratorium. Is my understanding. And,  
14 there of, you reviewed the design and it's inconsistent, in my view of our philosophy for  
15 affordable housing.

16  
17 Elizabeth Davison,  
18 I don't doubt there are some issues there. My only point was if you want to talk to the  
19 people who are responsible for reviewing these things, you need to talk with HOC about  
20 the AGP.

21  
22 Council President Leventhal,  
23 And we'll ask HOC -- we'll make sure the staff asks HOC if any pertinent staff are here.  
24 We seem to be on to the next item already. Yeah, Sonya, we'll ask HOC for the answer,  
25 too. The question is, is this a paradigm for future subdivision development including  
26 affordable housing? Because the units are conspicuous. I don't think they're consistent  
27 with what we wanted to bring about. I don't know that there's a lot more discussion on  
28 Bonifant Park right now. We'll look forward to hearing back from you. I'm calling on Mr.  
29 Knapp at this point.

30  
31 Councilmember Knapp,  
32 Thank you, Mr. President. A process question and a couple of specific questions. First of  
33 all, I wanted to thank Joe and Chris and Elizabeth for the efforts with Kings Crossing,  
34 because it was a -- I haven't had an opportunity to thank you publicly -- It was a difficult  
35 situation and we got everyone through it and there are lots of issues still there, but I think  
36 we're getting there and I appreciate your willingness to come to the table and work with all  
37 the parties. Part of that discussion leads us to the MPDU staging issues in the process  
38 that's outlined in Circle 12 between Park and Planning and DHCA and how we -- and DPS  
39 and how we actually implement the new staging elements associated with MPDUs. And  
40 when we had done this back in September you had come to us and explained to us the  
41 new process, but we didn't have any real data to see how that process had worked and so  
42 I guess my question to you at this point is how has this new process been implemented?  
43 Do we have any situations where we can actually point to how it's worked or hasn't  
44 worked or things we have caught that we wouldn't have caught otherwise? How  
45 something like -- something like a Kings Crossing may not have proceeded if we had this

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1 new process in place. Do we have anything to point to yet? Just get an update on how  
2 that is proceeding.

3  
4 Elizabeth Davison,

5 Well, I'm not -- Chris might have some specifics on that. We're still in effect implementing  
6 this because we're still, we're requesting some additional staff to be able to conduct some  
7 of these processes, and those will be coming to you as part of our budget. So we, at this  
8 point, do not have new staff. So we're still kind of limping along assigning people from  
9 other parts of the Department. But perhaps, Chris, do you have some?

10  
11 Chris Anderson,

12 I think the success of the effort is going to be the fact that there won't be any more Kings  
13 Crossings. I mean we're working much more closely with Park and Planning and DPS.  
14 DPS is very adamant that no permits will be issued until they -- I mean, until they  
15 completely satisfied of the status of an MPDU agreement and MPDU requirement. So I  
16 guess the measurement of success is there have not been any identified problems. And  
17 we are, we're actually undergoing a major renovation of our database in addition to tying  
18 into DPS' database, our MPDU database, which I think will reduce the chances of  
19 anything like that happening in the future. We're going to now track developments from the  
20 moment an application is received in Park and Planning all the way through the offering  
21 and ultimately through to the final purchaser. I think fine-tuning management practices like  
22 that and data control practices will pay off in the future to avoid unfortunate situations like  
23 that.

24  
25 Councilmember Knapp,

26 Do we have situations so far where there's been a new development has come forward  
27 where Park and Planning may have modified anything? I'm just curious. The conversation  
28 we're having now is speculative as it was in September. Have we had anything that we  
29 have worked together on that we have done differently?

30  
31 Chris Anderson,

32 I got developers now who are waiting with bated breath at DPS for permits to be released  
33 and they're not being released because they're working out their agreement to build with  
34 us. So, I guess -- I guess the expectation -- I mean, the expectation was always there. I  
35 think the re-enforcement of the expectation and the requirements of the law are being  
36 reinforced to the development community. And I'm getting more and more developers  
37 proactively -- I mean we notify them when they need to come in and do an agreement to  
38 build with us. They're more proactively seeking us out to make sure their agreement to  
39 build is in place as part of everything they do to get ready to get their permits released.  
40 We can share with you a copy of the report that we generate with DPS to kind of -- as new  
41 agreements to build are sent over there, they're set up in their system. And monthly -- we  
42 get a monthly report that will list each address, each unit by address, as to what the status  
43 of the permitting is on that unit. So, if you're interested, we can share that with you.

44  
45 Councilmember Knapp,

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1 That will be good. One of the issues that came out from a Kings Crossing piece was the  
2 identification of the units as senior housing or whether or not going to be townhouses or  
3 single units. Have we had any -- I mean, have we had conversations on any initial plans  
4 where DHCA and Park and Planning have worked together really on the identification of  
5 the appropriate unit types? That was one of the questions we had before. Is there  
6 anything at this point that you have worked on was modified differently as a result of your  
7 interactions for the development of the different unit types?

8  
9 Rose Krasnow,

10 I would not say we have done jointly. I was meeting with a developer yesterday coming in  
11 with the townhouse community where the MPDUs struck me as everything George said  
12 he didn't want, conspicuous and a different type of unit than all the others. We've asked  
13 them to look at that proposal, although they've gone through rezoning and was approved  
14 as that type. But we're more conscious now, I think, at Park and Planning, of all the  
15 implications of each decision we make with respect to the MPDUs.

16  
17 Chris Anderson,

18 In regards to the senior issue, there are very few, besides rental -- low-income housing  
19 rentals that tend to be geared toward the elderly. We don't have a lot of for sale. Some are  
20 dictated by the location, such as Leisure World, where it would be...

21  
22 Councilmember Knapp,

23 I was not concerned about the senior, but there was confusion as to who was approving  
24 which. And not necessarily with this group in front of us now, but five, six years ago, as to  
25 who had approve what, an agreement and trying to get Park and Planning and DHCA to  
26 recognize one had approved one type and another type may have been more appropriate.  
27 As we have the new process to see, what we're talking to each other on the front end and  
28 how do we show that not to get to a point where once said "X" and one said "Y".

29  
30 Elizabeth Davison,

31 I think we're definitely talking to each other, more Institutionalized getting copies of the  
32 plans that come in to Park and Planning, and again, I think this will play out over time. A  
33 lot of these developments, it takes a fair amount of time to go through the whole system  
34 and, again, when we have additional staff and Park and Planning has some additional  
35 staff and Development Review that it will make it easier for us to institutionalize this and  
36 make sure we're having, you know, all the kinds of conversations that we need to.

37  
38 Councilmember Knapp,

39 Okay.

40  
41 Elizabeth Davison,

42 As you can imagine, it's a staff-intensive kind of operation.

43  
44 Councilmember Knapp,

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1 As we continue before with the new process and when you do your annual reports, I think  
2 it will be helpful to roll that in somehow. I don't know the best measure of it but to be able  
3 to at least identify it as a new policy and procedures that you're implementing in here as  
4 what has occurred. There I had one specific that was Clarksburg related, came up at a  
5 town meeting last week in Clarksburg as it related to -- there are a number of MPDUs  
6 being constructed. There are some that are, I guess, actually serving as group homes?  
7 And there was -- the community raised the issue and there was not anyone there to  
8 provide a particularly good answer. To the extent that if you're aware of those, I would like  
9 to at least follow up and get more information as to be able to articulate that back to the  
10 community as to how that occurred and how that process occurs.

11  
12 Elizabeth Davison,

13 One of the elements of the MPDU law is that HOC has the right to be a third of the units  
14 and nonprofit organizations can buy up to a maximum of 40% of the units. They typically  
15 don't exercise that large of a percentage, so occasionally they do. But those are units that  
16 are often used as group homes. A nonprofit organization that serves a specific type of  
17 population will purchase one of these units there. We have a list of organizations that have  
18 been certified to exercise that right. So, they have to buy the unit and they run it as a  
19 group home.

20  
21 Councilmember Knapp,

22 And that's fine. It was a question that came up and no one had a good answer. So it would  
23 just be helpful if you could jot something down so I could get it back to the community  
24 through Jennifer Russell, and we could transmit that back so the people -- again a lot of  
25 this is also about managing expectations, people understanding how the programs work.  
26 And so it's just one of those things that people didn't understand and then no one could  
27 really answer it so it only further exacerbates that confusion. Thank you.

28  
29 Council President Leventhal,

30 For what I hope will be a last question, because we have another very lengthy item this  
31 morning, Mr. Andrews.

32  
33 Councilmember Andrews,

34 Thank you, Mr. President. I wanted to ask what the folks at the table, and we have a real  
35 resource there with Rose Krasnow, the former mayor of Rockville. It's my understanding  
36 that Rockville has not had MPDUs built off-site of projects. And they have, Rockville has  
37 some -- certainly has condos and multifamily buildings and structures that are more than a  
38 couple of stories tall. How has Rockville done it? You were mayor through 2001, and the  
39 program goes back, I think, a couple of decades, right?

40  
41 Elizabeth Davison,

42 No, it's quite new in Rockville.

43  
44 Councilmember Knapp,

45 The MPDU program?

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Elizabeth Davison,  
Yes.

Rose Krasnow,  
It certainly was in place the whole time I was mayor. And I can't answer...

Elizabeth Davison,  
Well, our staff trained the people who did that within the past five or six years. So it's quite new.

Rose Krasnow,  
No, we modeled our program after the County's program in terms of the percentages, the number of units that you had to be building in order to acquire them. I can't answer what has happened since 2001. We were asked several times by various developers for buyouts and we just felt the amounts of money they were offering didn't give us any real options. So we just simply said no and we were always able to get the units. Now, it was at a time, again, before you had the big condo rush. But as far as I am aware, we have never had allowed a buyout in Rockville.

Elizabeth Davison,  
There is a different issue. The data base shows that the first units were offered in 1999. So it's less than 10 years old, the program. What I'd heard through staff who used to work at Rockville and now work in our office, is that while the units are built, at least in the County, there is a process that if no one wants to -- if none of the people who are eligible want to buy the unit, again because of the cost, it then becomes available to people at any income. And I'd heard -- I can't document it -- I'd heard from this staff person that there are a number of units where that happened. And so they did not, in fact, serve low to moderate income households.

Councilmember Andrews,  
I would like to find out, let's find out what had actually occurred since 1999 with the projects in Rockville. I would like to pin that down. Second, that leads to the next big issue, Mr. President, which is one issue that has not been addressed as far as I'm aware, is requiring that the MPDUs that would be required as part of the annexation be built on-site at the Crown Farm. That has not been discussed as far as I am aware. And I think that's something that should be added to the terms of the annexation.

Council President Leventhal,  
Well, why don't take that up when we are on that agenda item? Okay. All right, thank you. It's a hot topic and we'll be back discussing with you many, many more times. Mr. Subin.

Councilmember Subin,  
Thank you. Mr. President, a point of personal privilege. I would like to note that this afternoon the Lighthouse will be having a ceremony in which they will be recognizing Kim

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1 Oliver, a Montgomery County Elementary School teacher as the National Teacher of the  
2 Year, which I think is just an extraordinary coup. And I would also like to note that it comes  
3 at the time when there are folks who are stating that our school system is dysfunctional  
4 and ineffective. And would note that Ms. Oliver comes from a school with the highest  
5 poverty rate in the County, is a Linkages school, and has had a series of three principals  
6 going through the school system's training program for principals and worked hard to get  
7 the greatest gains that we have, and that Ms. Oliver clearly comes out of that  
8 environment, has caused that environment to be what it is, and is just great to see that  
9 one of our own is being recognized as "The" National Teacher of the Year.

10  
11 Council President Leventhal,

12 It is great. Thank you Mr. Subin. We all join in congratulating Kim Oliver on her  
13 outstanding accomplishment. We now turn to the resolution regarding the annexation of  
14 Crown Farm. I'm sorry, no. We now turn to the District Council session and we have the  
15 introduction of ZTA 06-12: Moderately Priced Dwelling Units, Corner Lots. We need a  
16 resolution to establish a public hearing on June 13th. Can I have a motion to that effect?

17  
18 Councilmember Floreen,  
19 So moved.

20  
21 Councilmember Knapp,  
22 Seconded.

23  
24 Council President Leventhal,  
25 Ms. Floreen has made and Mr. Knapp seconded the resolution to establish the public  
26 hearing for June 13th on ZTA 06-12. Those in favor of the resolution to establish the  
27 public hearing will signify by raising their hands. Ms. Praisner, are you voting?

28  
29 Councilmember Praisner,  
30 Yes.

31  
32 Council President Leventhal,  
33 It is unanimous. Next we introduce Zoning Text Amendment 06-13: Establish Building Line  
34 Revisions. And we need a motion to establish the resolution -- the motion to establish the  
35 public hearing June 13th. Mr. Subin has moved and Mr. Knapp seconded the resolution to  
36 establish the public hearing on June 13th. Those in favor of establishing the public hearing  
37 will signify by raising their hands. It's unanimous. We now turn to the resolution to approve  
38 the City of Gaithersburg annexation petition for Crown Farm. The City of Gaithersburg has  
39 asked the County Council for our approval of the annexation of the Crown Farm property,  
40 just outside the city limits. The Crown Farm property will be developed whether the  
41 property is annexed or whether it remains in the unincorporated portion of the County. The  
42 1990 Shady Grove Study Area Master Plan called for intensive development at this site  
43 and anticipated annexation into the City of Gaithersburg. Under the master plan,  
44 approximately 2,000 dwelling units and 50,000 square feet of commercial or retail space  
45 could be constructed. A minimum of 12.5% residential development would have to be



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1 constructed under MPDU standards in the master plan. We estimate about 94 TDRs,  
2 Transferrable Development Rights, would have to be purchased to accommodate a  
3 density increase above the base zone for about 53 percent of the site. We don't know  
4 precisely the number of Transferrable Development Rights. In order to know that the  
5 developer would have to have submitted his preliminary plan to the planning agency,  
6 whether it were the County or the City planning agency, for approval. And that hasn't  
7 happened yet. However, today we're trying to pin the developer to a firm commitment  
8 before annexation. Also, the price paid for Transferrable Development Rights depends  
9 upon the market and how many TDRs are applicable to the site. Again, we don't know  
10 precisely the number of TDRs or their value, but we're seeking to get a commitment on the  
11 overall agreement before annexation takes place. The developer feels that the City of  
12 Gaithersburg has a better track record on the kind of new urbanist approach that he  
13 envisions for the Crown Farm development. Examples of this approach in the City of  
14 Gaithersburg include Kentlands and Lakelands. The example of this approach attempted  
15 in Montgomery County, thus far, is Clarksburg. Under the annexation proposal, the  
16 property would be rezoned to allow mixed residential and commercial uses. The number  
17 of dwelling units to be constructed on the site is 2,250 and consists of a variety of dwelling  
18 types. Approximately 320,000 square feet of commercial retail development is proposed.  
19 A 30-acre parcel is proposed to be donated to the County by the developer for  
20 construction of a public high school. The annexation proposal provides for the purchase of  
21 TDRs "or" a contribution to the Agricultural Land Preservation Easement Fund in lieu of  
22 the purchase of TDRs to support the County's agricultural preservation efforts and our  
23 farmers. The annexation proposal provides the 12.5% of residential dwellings being  
24 constructed under the standards and requirements of the County's MPDU program. And  
25 the annexation proposal provides for donation of a 30-acre site for a public high school,  
26 including improvements on the site to enable construction of the high school. The school  
27 system has estimated the value of the parcel to be donated for the new high school at 30  
28 to \$40 million. The developer paid \$33,135,894 for those 30 acres. The appraised raw  
29 value of the land was \$42,042,000 in September of 2005. High-density development of the  
30 parcel proposed to be donated for a school, according to the developer's attorney, could  
31 make the site worth \$80 million. For our purposes, let's say the school site is  
32 conservatively worth \$40 million. This land has been envisioned to be developed and  
33 annexed for the past 16 years. It's in our master plan. It has never been a question of  
34 whether it would be developed or annexed. The question has been when and how. If this  
35 were developed under County aegis, we could lose the donated high school site with a  
36 value of at least \$40 million. We would get the MPDUs, but we will get those under the  
37 annexation agreement. In my judgment, the outstanding question, which I expect we will  
38 discuss right now, is what will be the arrangement with respect to the Transferrable  
39 Development Rights, or payment in lieu thereof. Our job as County Councilmembers is to  
40 achieve the outcome most in the public interest. On the merits, this is a good deal for  
41 Montgomery County. We're getting affordable housing and support for agricultural  
42 preservation and a donated school site worth at least \$40 million. I want to propose the  
43 following, because I know that -- already lights are blinking -- and I know that many  
44 Councilmembers, likely all Councilmembers -- possibly all Councilmembers, will have  
45 questions. I want to propose, by consent, that we limit ourselves to a five-minute

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1 agreement per Councilmember to be timed by the Clerk, if there is no objection. And we  
2 will simply go down the line, each Councilmember will have five minutes to make any  
3 statements or ask any questions. I've already made my statement and I will pass by  
4 myself, if that is agreeable. The Councilmembers will do a first round of five minutes each  
5 with a timer. Is there an objection?

6  
7 Councilmember Subin,  
8 I object.

9  
10 Council President Leventhal,  
11 Well, let's have a vote. Those in favor of a time agreement will signify by raising their  
12 hands. It's myself, Ms. Praisner, and "Mrs." Perez.

13  
14 Councilmember Praisner,  
15 Mr. Perez.

16  
17 Council President Leventhal,  
18 Mr. Perez. Mrs. Perez would be in favor of the time agreement as well.

19  
20 [ LAUGHTER ]

21  
22 Councilmember Perez,  
23 I'm sure she would support me.

24  
25 Council President Leventhal,  
26 Okay. Those in favor of unlimited debate through lunch will signify by raising their hands.  
27 [LAUGHTER] It's everyone else. Okay. I will call on Councilmembers as I see their lights  
28 and the first light I saw was from Ms. Floreen.

29  
30 Councilmember Floreen,  
31 Thank you, Mr. President. I'm not going to take very long. But I did have some questions.  
32 There has been a lot said about the TDR issue. And lots of disagreements about whether  
33 -- how transfer of Development Rights would be applied in this situation, and, therefore,  
34 what we should be asking with respect to that. Should we make demands, should we  
35 require TDRs? We had a letter that came in yesterday from Ms. Sears from Linowes and  
36 Blocher with respect to the TDR issue, and I had some questions that I wanted to ask.  
37 We've had a lot of staff reports. I would like to remind everyone that this conversation  
38 about Transfer Development Rights is entirely theoretical because the decision about the  
39 applicability of Transfer of Development Rights in the County is not made until a project  
40 has gone to preliminary plan approval. Isn't that right? Someone say yes.

41  
42 Unidentified Speaker,  
43 Yes.

44  
45 Councilmember Floreen,



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1 And based on my recollection and understanding, the Planning Board has rarely required  
2 maximum use of TDRs in a particular project because it depends on site constraints and  
3 whatever the particular application might reflect. Would that be accurate?

4  
5 Callum Murray,  
6 Ma'am, typically they've recommended a maximum of -- or a minimum of two-thirds.

7  
8 Councilmember Floreen,  
9 Two-thirds?

10  
11 Callum Murray,  
12 Typically, yes, two-thirds.

13  
14 Councilmember Floreen,  
15 Two-thirds is -- a typical number.

16  
17 Callum Murray,  
18 Yes.

19  
20 Councilmember Floreen,  
21 If that, I think it's required by law, actually, isn't it? Two-thirds.

22  
23 Callum Murray,  
24 It is, but in certain totally multifamily developments, it's been 50%. There is ambiguity.

25  
26 Councilmember Floreen,  
27 There is a lot of range over how much TDRs have been required in historic practice.  
28 That's correct? Ms. Sears has said -- and I would like to have this confirmed by County  
29 Planning staff -- that the part of this property that the County zoned as a Transferred  
30 Development Rights receiving area could, under the County zone, if it went to the County  
31 process, could develop to 500 units without the use of any TDRs. Is that correct?

32  
33 Callum Murray,  
34 Correct, ma'am, if it was done under the base R-60 zoning, with no optional method.

35  
36 Councilmember Floreen,  
37 Right, but that could occur. And she also says on the other portion of the property it could  
38 develop to about, up to -- as much as 2,100 units. Again, under the zoning, without the  
39 use of Transfer of Development Rights, because they were not required under the master  
40 plan in the zone.

41  
42 Callum Murray,  
43 They were not required but I would...

44  
45 Councilmember Floreen,



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1 But is that correct?

2  
3 Callum Murray,  
4 Yeah. I don't...

5  
6 Councilmember Floreen,  
7 So that would be 2,100...

8  
9 Callum Murray,  
10 ...an unrealistic expectation because you have around 70, 80 acres on the east side. If  
11 you assume a school at 30 acres...

12  
13 Councilmember Floreen,  
14 I'm not asking you for other options, I'm just asking you for what technically -- technically...

15  
16 Callum Murray,  
17 It could happen.

18  
19 Councilmember Floreen,  
20 ...could be done if it went through the County process. Now, as I am reminded, the master  
21 plan, our master plan had a limit of 2,000 units. On this overall Crown Farm property, plus  
22 MPDUs. That would bring it up to 2,400 units max, in terms of the numbers of units.

23  
24 Callum Murray,  
25 2,440, max.

26  
27 Councilmember Floreen,  
28 2,440 Max, with MPDUs.

29  
30 Callum Murray,  
31 Yes.

32  
33 Councilmember Floreen,  
34 And if the project came forward through the County process, with 500 units on the part -- if  
35 it chose not to select the TDR option -- if it came under the County process, it could build  
36 as much as 2,000 units under the County process, because that would be the cap without  
37 Transfer of Development Rights.

38  
39 Callum Murray,  
40 Theoretically, yes.

41  
42 Councilmember Floreen,  
43 Theoretically.

44  
45 Callum Murray,

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1 Yes

2 Councilmember Floreen,

3 So they could build right now, today, they could go file an application for 2,000 units on  
4 this property without being obligated to provide Transfer of Development Rights.

6 Callum Murray,

7 Correct. Unlikely, but correct. Yes.

9 Councilmember Floreen,

10 Yes. I think that is an important piece of information to weigh as we discuss this. This  
11 applicant is proposing to give us a -- whatever it's valued at -- 40 to \$80 million piece of  
12 the property for the public school system. And I think we need to weigh that very carefully  
13 as we look at what kind of demands we should impose upon the Crown Farm. Thank you.

15 Council President Leventhal,

16 Next is Vice President Praisner.

18 Councilmember Praisner,

19 Thank you. I think this is a complicated issue. I think that there are, as I indicated last  
20 week, several questions that I have. Quite honestly, when I looked at the map -- this may  
21 follow the letter of annexation from a standpoint of not leaving a parcel within the County  
22 surrounded completely by annexed or municipal property -- but it's pretty close to a teeny  
23 tiny stove pipe in order to do that. I will accept the County Attorney's judgment, because I  
24 think having had the County Attorney weigh in, there are higher hurdles from a legal issue,  
25 but I really think that this is stretching it a great deal to say that you have not created an  
26 enclave on the part of some of the residents of the area, all of whom in the beginning and  
27 end will be Montgomery County residents and I think there is a problem. I do not want to  
28 encourage this and I really have a problem with the County Attorney's judgment on this  
29 issue. That matter, I guess, we could throw a little sand all along the way and say it's  
30 Montgomery County sand and, therefore, there is not an enclave. It smells like an enclave  
31 and it looks like an enclave to me. So I have that problem. But I also have the problem of  
32 the County Attorney's language. I have really only a couple of comments to make and a  
33 series of motions that I am going to --like to tell my colleagues that I'm introducing,  
34 consistent with my comments last week. I am a little troubled by the tone of some of the  
35 comments about motivation and individual Councilmember -- how individual  
36 Councilmembers should act or proceed. Let me say I have always found Mr. Mardinosice  
37 to be an honorable man who's following the laws that existing now. I may not like the laws  
38 that exist now, and we do, I believe, need a lot of election reform, but I have never seen  
39 him not have both respect for the law and appreciation for the requirements and  
40 regulations as he goes forward. That said, this is a significant parcel. It's also a significant  
41 parcel that carries within it and its existing master plan more than a passing reference to  
42 TDRs. And so, therefore I think -- and, yes, there is a significant parcel that will be not  
43 necessary for the County to purchase for a school site, but the development that is  
44 associated with that parcel can still go forward. So it's not as if something has not -- is not  
45 viable or possible and there are not benefits. I have three motions that I would like to

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1 make. The first one is number 9, and says the existing historic farm house and associated  
2 log tenant's house currently says are preserved and improved. I would say the existing  
3 historic farmhouse, associated log tenant house, including an appropriate environmental  
4 setting as determined by the Gaithersburg Historic Preservation Commission are  
5 preserved and improved.

6  
7 Council President Leventhal,  
8 All right, let's take these one at a time.

9  
10 Councilmember Silverman,  
11 Second.

12  
13 Council President Leventhal,  
14 There is -- the motion is made and seconded. It's my understanding from conversations  
15 with Ms. Praisner that in the Council Vice President's mind as an example of an  
16 appropriate environmental setting is the lawn in front of the Kentland's Mansion, in her  
17 mind, that enables someone to see the historicity of the site without having to fight your  
18 way through townhouses or rowhouses.

19  
20 Councilmember Praisner,  
21 I don't want to drive to Babe Ruth's house, only it would be this historic farm house by  
22 meandering through a lot of high-rise buildings and I think that's the concept Mr. Leventhal  
23 is reinforcing. You have some kind of a setting. I'm not going to say what it should look  
24 like, but I have confidence that Gaithersburg has the same commitment to Historic  
25 Preservation through their Historic Preservation Commission and through the process  
26 would identify what the environmental setting that allows to you appreciate both the  
27 farmhouse and the log tenant house.

28  
29 Council President Leventhal,  
30 To be clear, we're not talking about preserving the entire farm as it was when it was being  
31 farmed. We're talking about preserving a reasonable viewshed.

32  
33 Councilmember Praisner,  
34 Correct.

35  
36 Council President Leventhal,  
37 And in conversation where Ms. Praisner, she identified the lawn front of the Kentland  
38 Mansion as an example of the kind of thing that achieved that purpose. Mr. Felton, did you  
39 want to address that point?

40  
41 Fred Felton,  
42 Just to comment the city completely agrees with the Council on that and we will absolutely  
43 do so.

44  
45 Councilmember Knapp,



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1 Could we restate the motion, just...

2  
3 Councilmember Praisner,  
4 Sure, "The existing historic farm house and associated log tenant house," here's where  
5 my amendment would occur, "including an appropriate environmental setting as  
6 determined by the Gaithersburg Historic Preservation Commission."

7  
8 Council President Leventhal,  
9 Okay, is there discussion on the motion? I see lights on. Mr. Knapp, Mr. Subin, are you  
10 waiting your turn for other issues or did you want to discuss this motion?

11  
12 Councilmember Subin,  
13 Not this motion.

14  
15 Council President Leventhal,  
16 Those in favor will signify by raising their hands. It's unanimous.

17  
18 Councilmember Praisner,  
19 Okay, Ms. Praisner has a second... My motions are in increasing complexity and,  
20 therefore, I think we have got the easiest one passed. Number three is the item that  
21 relates to Moderate-Priced Dwelling Units. I appreciate the fact that the City of  
22 Gaithersburg is working towards this effort, the City of Gaithersburg doesn't have a  
23 Moderate-Priced Dwelling Unit Program as yet. In their comments and response to my  
24 questions they have indicated that the length of time that a unit remains MPDU is probably  
25 different under their program. In my view, that's not acceptable to me. I appreciate it, it's  
26 the 12.5%, I appreciate the fact that they would be Moderate-Priced Dwelling Units. What I  
27 am adding to the end, the statement now is "12.5% of the residential dwelling units are  
28 built under the standards and requirements of the County's Moderate-Priced Dwelling Unit  
29 program." That assumes, I assume, the County's regulations, but I would add "and  
30 managed by Montgomery County's DHCA with a one-time application preference for  
31 Gaithersburg residents that meet the Montgomery County criteria."

32  
33 Council President Leventhal,  
34 Now, first of all, is there a second? The motion is made and seconded. Here's what I  
35 would like to ask my colleagues. I have noted that when Ms. Praisner yields the floor,  
36 which would be at the conclusion, I think, of debate on her three amendments, which  
37 we're now on the second, Mr. Knapp and Mr. Subin in that order have other items to bring  
38 up. What I'm going to ask them to do now is if they don't want to speak to this motion is to  
39 turn their lights off. I have the note because we're going to have debatable motions now  
40 and so I want to see lights on the motions that are before us, okay. So, but you're let's are  
41 still on. Did you want to speak to the motion, Mr. Subin?

42  
43 Councilmember Subin,  
44 Yes.

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1 Council President Leventhal,  
2 Okay, Mr. Subin.

3  
4 Councilmember Subin,  
5 I'm going to oppose this motion. This is just another example of this body attempting to  
6 overreach and not recognizing the authorities and responsibilities and abilities of other  
7 elected bodies. The City of Gaithersburg has more affordable housing than almost any  
8 place in this County. And the City of Gaithersburg has more affordable housing than  
9 almost any place in this County. And the City of Gaithersburg has done more to preserve  
10 its affordable housing than anybody in this County. It's revitalization efforts on the east  
11 side of 270 has taken dilapidated housing, ripped it down, rebuilt it, and repopulated that  
12 housing with the folks who were in it before. We haven't done that, the city has done that.  
13 The city has ensured that it's stock of affordable housing has been there. And we continue  
14 to ignore and this motion by having the County's DHCA would continue to ignore the real  
15 problem, which is workforce housing for people who serve this County and can't afford to  
16 live there. That's what this motion would do. It would take the program out of the hands of  
17 one of the most successful programs in this County for affordable housing and put it into  
18 the hands of Montgomery County, which has done virtually nothing to assure workforce  
19 housing for those who serve us and cannot live here. They have the commitment to put  
20 that housing there. To tell them they need to do it our way, under our supervision will put  
21 it, will be a -- a way that is less, has been less successful than they have been. They are --  
22 that is a body that has the same level of recognition by the state legislature as we do. And  
23 to say they're not capable and we're more capable and that we should have the powers  
24 that they should have is simply another on a growing list of power grabs by this County.  
25 Leave the housing issue in the hands of those who have been far more successful than  
26 we in making sure that there is affordable housing. We have failed. They have not. Let's  
27 leave it there.

28  
29 Council President Leventhal,  
30 On the motion, Mr. Perez.

31  
32 Councilmember Perez,  
33 A question for the folks from the City of Gaithersburg. The MPDU program, the 12.5% is  
34 one aspect of the MPDU program. That is what I often call the front-end, then there is the  
35 back-end of the control periods. Are you -- are you willing to comply with all the front-end  
36 and the back-end requirements?

37  
38 Fred Felton,  
39 Thank you, Mr. Perez. We are in the -- conceptually we're completely in agreement with  
40 the major components, for example, the 12.5% MPDU, income restrictions for eligible  
41 purchasers. The equity increase -- the modest equity increase to keep it affordable, we're  
42 supportive of that.

43  
44 Councilmember Perez,  
45 Still waiting for my question to be answered; Back-end?

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Fred Felton,

The only exception -- like Mr. Perez, we don't want to, if we can avoid it have to comply with certain details, for example; we don't want architecture looking any different. We would like this Council to mandate that we follow your pricing, your control period, your equity increase period, all of the key components that make it work and allow us to negotiate certain details that could address some of the issues we heard today.

Councilmember Perez,

Okay, I'm actually comfortable, I was very listening carefully to what you said and about two-thirds of the way into that answer, you said, you answered my question, which was you are willing to abide by the control period. The front-end and the back-end.

Fred Felton,

Yes, sir.

Councilmember Perez,

Okay. I appreciate -- for me, that's the most important issue is we're trying to ensure the production and retention of affordable housing. And I think I'm hearing you say that you are willing, and I would, I might have to think of language here regarding, again, "Trust, but verify" to make sure that all of those aspects are complied with. I am, frankly, willing on the issue of compatibility and architecture and things of that nature, I am more flexible in terms of willing to provide that flexibility to the City of Gaithersburg. But, you know, I guess -- in light of what I heard your answer, what I might do is offer some sort of a -- well, let me see. "12.5% are built under the standards and requirements of the County's MPDU program." May be I will sit and just listen to the debate for a moment and I am going, I might be working on some language that memorializes the, "including but not limited to the control periods that apply."

Ralph Wilson,

I think that the city's talking about the eligibility and the control period talking about the eligibility and the control period. The language in three would have to have an exception to those two requirements. It's written broad enough now to include the entire coverage of the MPDU law. So I'm suggesting you could amend that sentence to exclude the eligibility and control period, which is what the city's requesting, I think.

Councilmember Praisner,

We don't want to change the eligibility.

Councilmember Perez,

No, I don't want to change the eligibility, Ralph. I am saying I want to memorialize the eligibility and control period. I'm willing to provide the architectural flexibility that you're desiring. I just want to make sure the numbers that we produce at the front-end and the numbers we retain at the back-end are numbers we would otherwise have if it were the County's parcel. I know the developer, Mr. Mardinosice, I believe agreed with that.

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1  
2 Aris Mardinosice,  
3 Mr. Perez, we agree, absolutely, with all your regulations. Only question we have, we want  
4 to have one master. We can't take care of two masters. That's why we're asking...

5  
6 Councilmember Perez,  
7 We're sympathetic to that.

8  
9 Aris Mardinosice,  
10 ...asking that you allow the City of Gaithersburg to manage the MPDU under your laws,  
11 everything under your laws. Go ahead.

12  
13 Barbara Sears,  
14 I just think if you said "...including but not limited to the income eligibility and control  
15 periods provided therein," or something like that, that would be, that would hit your points.

16  
17 Fred Felton,  
18 If I can also suggest the word "substantially" compliant.

19  
20 Councilmember Praisner,  
21 No, that's the problem.

22  
23 Council President Perez,  
24 Okay, well, I don't want to stop the debate. I may have some verbiage to offer as the  
25 second degree amendment. I can't -- I'm sympathetic to the notion that -- well, first of all,  
26 I'm sympathetic to the notion that it might be useful, as long as we know the parameters,  
27 to have the City of Gaithersburg enforcing this. Ms. Floreen.

28  
29 Councilmember Floreen,  
30 Thank you, Mr. President. I agree with Mr. Perez, that there is a way in the middle here to  
31 address this concern. I think -- I gather that the city -- the city's many issue is that it would  
32 like to make -- give priority to Gaithersburg residents.

33  
34 Aris Mardinosice,  
35 And workers.

36  
37 Councilmember Floreen,  
38 And workers. Is that the sole, the key -- and wants to administer the program.

39  
40 Fred Felton,  
41 That's correct.

42  
43 Councilmember Floreen,  
44 Are those the key points...

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1 Fred Felton,  
2 Yes, ma'am.

3  
4 Councilmember Floreen,  
5 ...of disagreement? Well, if that's the case, what I would propose is it really in concert with  
6 what Councilmember Perez has just suggested, is a amendment with the words to be  
7 worked out. That that would allow -- that that would require the production of -- the  
8 language and Action Item Number 3 in the resolution. and additional language that  
9 says...including -- that would encapsulize the points of eligibility pricing control periods and  
10 administration by the City of Gaithersburg. But recognizing that the city may choose to  
11 give preference to residents and workers within the city. If that is what is achieves some  
12 clarity on the subject that would be away to -- be a way to achieve the consistency of  
13 management of the policy, yet allow a one master to take charge. I would make that  
14 motion. As a substitute motion.

15  
16 Councilmember Perez,  
17 I'm working on the -- I had some language...

18  
19 Councilmember Floreen,  
20 Along those lines, yes.

21  
22 Councilmember Perez,  
23 And we were...

24  
25 Councilmember Floreen,  
26 Always a problem drafting in public.

27  
28 Councilmember Perez,  
29 Well, there is a subscript right now, "Sausage-making in progress."

30  
31 Councilmember Floreen,  
32 Yes.

33  
34 Councilmember Perez,  
35 Under the...

36  
37 Councilmember Praisner,  
38 The trailer.

39  
40 Councilmember Floreen,  
41 Perhaps we could add.

42  
43 Councilmember Perez,  
44 For closed captioning.

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1 Councilmember Floreen,  
2 If there is an agreement, perhaps we could -- apparently there is more to be discussed,  
3 perhaps we could ask staff to put pen to paper for us on this.

4  
5 Council President Leventhal,  
6 Perhaps...

7  
8 Councilmember Perez,  
9 "including but not limited to the provisions pertaining to income eligibility, comma, control  
10 period, comma..."

11  
12 Councilmember Floreen,  
13 Pricing.

14  
15 Councilmember Perez,  
16 "...pricing, comma..."

17  
18 Councilmember Praisner,  
19 Management, too. You've got to follow the same management.

20  
21 Councilmember Perez,  
22 "...management, comma..."

23  
24 Councilmember Floreen,  
25 No.

26  
27 Councilmember Perez,  
28 Well...

29  
30 Councilmember Floreen,  
31 Well, my proposal would be clear that this would be managed by the city.

32  
33 Council President Leventhal,  
34 Okay, let me make this suggestion.

35  
36 Councilmember Praisner,  
37 That's not the same thing as management requirements.

38  
39 Council President Leventhal,  
40 There is a motion now pending. We don't often...

41  
42 Councilmember Perez,  
43 This is a second degree amendment to that motion.

44  
45 Council President Leventhal,



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1 You don't have the amendment. So we could -- we could -- either vote on the pending  
2 amendment. The pending amendment wouldn't go in the same direction. The amendment  
3 as I understand it would leave the administration of the MPDUs in the hands of the City of  
4 Gaithersburg. Ms. Praisner motion puts the administration of the MPDUs with Montgomery  
5 County DHCA. If there are not the votes to place administration of the MPDUs with County  
6 DHCA, we could come back on exactly how the guidance to the City of Gaithersburg  
7 would be drafted, but they are two different directions and so it would be useful, I think, to  
8 get the vote of the Council at this point as to whether to have the administration for DHCA  
9 or this the city and that gives you all more time, if the votes are not there for that, to  
10 elaborate on the agreement with the City of Gaithersburg.

11  
12 Councilmember Floreen,  
13 I think those are the management by the city and also some prioritization to Gaithersburg  
14 residents and workers, which are our elements of disagreement.

15  
16 Council President Leventhal,  
17 Right, but the motion now pending would be in a different direction. Let's figure out  
18 whether the Council wants to go in that direction, and if not, if the Council wants to leave  
19 administration of MPDUs with the City of Gaithersburg we can come back to the question  
20 of additional guidance to the City of Gaithersburg. So but you all don't have your Drafting  
21 that.

22  
23 Councilmember Perez,  
24 So I will respectfully oppose this understanding if it doesn't pass, I intend to offer another  
25 amendment along the spirit of what I've said.

26  
27 Council President Leventhal,  
28 Yes, yes. Understood. So the debate is on Ms. Praisner's motion at the moment, and Mr.  
29 Knapp is next.

30  
31 Councilmember Knapp,  
32 Thank you, Mr. President. Mr. Perez used the term "'Trust but verify" and I had asked the  
33 question last week. One of the questions I have is how do we implement this type of  
34 relationship? And if I -- if the response that is included in the packet on page 2 is that  
35 noncompliant issues, if for some reason they were any noncompliance, that legal action --  
36 the courts have the authority to order compliance -- and obviously we have that, but I don't  
37 think anyone wants to go down that road. We want to come up with a workable  
38 arrangement To Ms. Praisner's point, the notion is we want to make sure that certain  
39 things are done in a proactive fashion and people working together, whether -- and you're  
40 right to have a single master and make sure the boxes are checked. Before we get down  
41 the road, we know the boxes have been checked and how do we, how do we  
42 accommodate that kind of an approach? Is there a language we can put in to bring  
43 something back to -- coordinates the city with DHCA to make sure that certainly eligibility  
44 requirements were met? I'm just trying to figure out a way to make sure the people are  
45 working together to get to accomplish the objectives as opposed to they did or didn't get

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1 met and the only legal recourse is to take to the courts after the fact. I think everyone  
2 wants to accomplish certain things. So I guess I'm asking staff, I have never done an  
3 annexation unless I have been here.

4  
5 Ralph Wilson,

6 Never had the issue come up before in our annexation agreements. I'm not sure what the  
7 resolution would be other than the good offices of the Council working with the  
8 Gaithersburg, if there is an allegation of noncompliance. First of all, you would have to  
9 resolve whether it is in fact noncompliant and then if you couldn't work it out with the city,  
10 then what we were saying, then the only recourse would be legal action. So I'm not sure  
11 how you would get yet back before the Council once the annexation has taken place and  
12 the Council has given their consent to rezone it. There is no process in place for doing  
13 that.

14  
15 Councilmember Knapp,

16 So I guess the only other way to do it would be to use language akin to what Mr. Perez or  
17 Ms. Floreen has identified and have specificity and assume that by specifying those  
18 requirements here, that it's been met.

19  
20 Ralph Wilson,

21 Yeah, I think that's what the normal assumption is. I don't remember any instance where...

22  
23 Councilmember Knapp,

24 I'm not saying it comes back to the Council, but they checked out the DHCA and said yes,  
25 it complies with the regulations or this is consistent with our policy.

26  
27 Barbara Sears,

28 I think you're back -- If I may, Mr. Knapp -- I think you're back to you have given them the  
29 charge to follow those regulations and laws. You have asked them to administer it and I  
30 think you back to the question of trusting them to do so. And from what we have seen,  
31 from my experience with the city, they're on top of it.

32  
33 Councilmember Knapp,

34 Okay. All right, I'll continue to talk to Mr. Perez and Ms. Floreen.

35  
36 Councilmember Praisner,

37 I would like to speak.

38  
39 Council President Leventhal,

40 Okay.

41  
42 Councilmember Silverman,

43 On signal?

44  
45 Council President Leventhal,

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1 On the motion on Ms. Praisner's motion, Mr. Andrews, and then I'll next call on Ms.  
2 Praisner on her motion. Mr. Andrews.

3  
4 Councilmember Andrews,  
5 Thank you, Mr. President. I second this amendment for the purpose of discussion  
6 because I wanted this issue to be addressed. And I see we're going to have some other  
7 amendments being proposed. I think it would actually be better if the city manages this,  
8 but I wanted it to be managed tightly. I want it to be managed under tight terms of the  
9 County's current requirements plus an on-site requirement not currently under the County  
10 requirements. So I will withdraw my second so we can go forward with amendments that  
11 people will be making...

12  
13 Unidentified Speaker,  
14 You can't.

15  
16 Councilmember Andrews,  
17 and I may add a second amendment to theirs, but I want to make sure that we have  
18 language in here that is very clear about what the County requirements are. And then I  
19 want to make sure that the on-site requirement is added a part from what currently exists.

20  
21 Council President Leventhal,  
22 Okay, let me just get clarity on the parliamentary situation right now. Ms. Praisner has  
23 made a motion that has the administration of the MPDUs on the Crown Farm with County  
24 DHCA. Mr. Andrews seconded it. He's withdrawing his second. I will second Ms.  
25 Praisner's motion, the motion is still pending before the Council. Ms. Praisner.

26  
27 Councilmember Praisner,  
28 Let me say that I certainly respect Gaithersburg, and this is not a power grab in my view.  
29 This is an efficiency move. The Gaithersburg, town of Gaithersburg doesn't have an  
30 MPDU program. It doesn't have the staff, it doesn't have the experience. It doesn't have  
31 the documents, it doesn't have the analysts, it doesn't have any of the mechanisms to  
32 administer, let alone review and consider the economics and dynamics of an MPDU  
33 program. So, in essence, for one parcel that was a County parcel, and with significant  
34 number of units, the thought was this is moving fast and to expect Gaithersburg to --  
35 again, with all due respect, this is not a criticism of Gaithersburg but a snapshot of what is  
36 existing right now. Gaithersburg has no program. Unless they want to formally tomorrow  
37 adopt the exact same language that is existing they are going to -- and if they can, I don't  
38 know -- they're going to have to go through a process to create, have staff up to speed,  
39 have the administrative processes in place to administer an MPDU program. I hope they  
40 will have one. It's long overdue. It's long overdue for Rockville. As we learned, Rockville's  
41 has only been in place since 1999. It's long overdue. Yes, we also need to continue to  
42 monitor and maintain our program and improve it. And, yes, we may have criticisms with  
43 the Department. But the fact is they have the mechanism and the structure. If you want to  
44 say no waivers in place, all the other issues, those can be incorporated. I don't like hearing  
45 "Substantially in conformance." I want "Exactly in conformance" with the MPDU program

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1 that exists now. Including the criteria for approval of residents who might apply to meet  
2 that requirements, including the numbers, including the length of time, including all of  
3 those issues, whether they're rental or owner-occupied units. And the mix of rental and  
4 owner-occupied are obviously part of what have would be controlled by Gaithersburg in  
5 their review of the development. I'm talking about administration. I thought I was being  
6 responsive to the City of Gaithersburg's concern about some preference for their residents  
7 by allowing a one-time priority getting-in opportunity. If you don't live in Rockville -- in  
8 Gaithersburg now, you're not a resident. How can you have preference for it? If your  
9 workers are going to be residents of the County by virtue of this, they would fall under that  
10 program. I have no problem again including or expanding that to be not only residents but  
11 employees of the city that meet the criteria. We're not talking about workforce housing. We  
12 don't have a workforce housing program. Gaithersburg has no workforce housing  
13 program. No one in Montgomery County has a workforce housing program. With all due  
14 respect, having spent time looking at it, it's a complicated issue and I'm not sure when  
15 we'll get there, if at all. So, I'm talking about Moderately-Priced Dwelling Units, a program  
16 we have had, a program we have improved upon, and a program where all the  
17 mechanisms currently exist, where preference can be given for given for employees and  
18 residents of Gaithersburg and it can be ready to rock 'n' roll tomorrow.

19  
20 Council President Leventhal,  
21 Okay, Mr. Perez is next. Mr. Perez is next. If Mr. Perez's intent now is to -- oh, his light is  
22 off. There you go.

23  
24 Councilmember Perez,  
25 Well, you wanted to vote cleanly on this.

26  
27 Council President Leventhal,  
28 That would be my preference, but I can't control that.

29  
30 Councilmember Perez,  
31 No, whatever your preference, I'm happy to abide by it. I'm prepared to offer some  
32 language at the conclusion of the motion.

33  
34 Council President Leventhal,  
35 All right, I appreciate that. Very good. Mr. Silverman.

36  
37 Councilmember Silverman,  
38 Thank you, Mr. President. This is not a reflection on the City of Gaithersburg. Like many of  
39 my colleagues, including my friend to the left, I have been a huge supporter of the city,  
40 trying to get you guys a pool.

41  
42 Fred Felton,  
43 We appreciate that.

44  
45 Councilmember Silverman,

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1 But in the great sausage making that is the legislative process, what is in this for the City  
2 of Gaithersburg is the enormous tax revenues which you get through annexation.  
3 Otherwise you don't get them and it seems in the spirit of compromise this would be part  
4 of it. We have a program in place, you don't. It's not much more complicated than that to  
5 me. Why on earth we would try to say that you have to go create a program and we're  
6 going to put all of these bells and whistles on it that basically say at the end of the day, it's  
7 got to be exactly like our program is form over substance. Seems to me a lot easier for us  
8 to manage the program as we're managing it countywide as part of the process. This has  
9 nothing to do with not believing the city is capable of doing it. In fact, we have all the  
10 provisions in here where we're saying, you know what, we have confidence that the city is  
11 going to be able to review the -- our adequate public facilities ordinance. We're turning it  
12 over to you. We're basically saying "Hey, look, go ahead and figure out a traffic mitigation  
13 plan that will made our APFO standards, work something out with the school system." But  
14 that is to me, far less complicated than to ask you to put together an entire program to  
15 replicate something we already have in place, which is why I'm going to support Ms.  
16 Praisner's motion.

17  
18 Council President Leventhal,  
19 Mr. Subin.

20  
21 Councilmember Subin,  
22 Mr. Hansen, do we have the legal authority to take a County program and impose it to the  
23 city if it's not a health program? Are we acting as a Board of Health here or as a District  
24 Council?

25  
26 Marc Hansen,  
27 You're acting as the County Council, District Council.

28  
29 Councilmember Subin,  
30 Okay, does the District Council have the legal authority impose a program on a  
31 municipality?

32  
33 Marc Hansen,  
34 No.

35  
36 Councilmember Subin,  
37 I want to make it perfectly clear. I have no problem with the MPDUs here. I have no  
38 problem asking the city to have an MPDU program. This has nothing to do with the Crown  
39 Farm, has nothing to do with the developer, it's a legal question. Do we have the authority  
40 to do that or are we just, one more time, adding to the list we don't care what the legal  
41 authorities are, we're going to do it anyway?

42  
43 Marc Hansen,



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1 Under Article 23 (a), as I understand it, the city would have the authority to decide to make  
2 applicable within the boundaries of the city the County's MPDU legislation. The County  
3 itself doesn't unilaterally have that authority.

4  
5 Councilmember Subin,  
6 Is it the same with Takoma park, and Rockville, or any other municipalities?

7  
8 Marc Hansen,  
9 Article 23 (a) applies to all the municipalities. The answer is yes, it applies to all of them.

10  
11 Councilmember Subin,  
12 This is not Crown Farm specific.

13  
14 Marc Hansen,  
15 No.

16  
17 Councilmember Subin,  
18 So we don't have the legal authority. So if you all want to, once again, have us end up in  
19 court across the street on a legal issue, I don't know if the city would do this or not, I know  
20 what I would advise my friends to do, but I know what my friends wouldn't do. But you do  
21 take the risk of ending up across the street.

22  
23 Council President Leventhal,  
24 Well, I appreciate Mr. Subin's question. It's germane and relevant. We're entering into an  
25 agreement with the City of Gaithersburg embodied in this Council resolution, agreeing with  
26 annexation. Presumably the City of Gaithersburg is agreeing with us to comply with the  
27 terms of this resolution. Just about everything in here is a voluntary and non-binding  
28 agreement between the County and the city to allow this land to be annexed into the city.  
29 It's not clear, as Mr. Wilson said earlier, what happens where the city falls short and we're  
30 in unchartered territory there. It might end up in court. The expectation is all the terms that  
31 the City of Gaithersburg is voluntarily agreeing to because the City of Gaithersburg asked  
32 us for the annexation and wants the annexation. Let me ask Mr. Hanson, if Ms. Praisner's  
33 motion were to pass, which seems not very likely, we're hearing the debate here, but if it  
34 were to pass one would imagine the City of Gaithersburg voluntarily would comply with it  
35 as it's doing with all the other terms of this. So it's not an imposition on the City of  
36 Gaithersburg. It's not an illegal or unconstitutional imposition on the City of Gaithersburg to  
37 ask it to allow County DHCA to administer the MPDUs on this parcel. And if the City of  
38 Gaithersburg voluntarily were to agree to allow County DHCA to administer the program  
39 on this parcel, there would be no illegal imposition on the City of Gaithersburg. Is there  
40 anything I said incorrect?

41  
42 Marc Hansen,  
43 I think that's essentially correct. I think the city would be -- in order for this to be effective  
44 the city would have to enter into a binding agreement with the developer, making the  
45 County's MPDU program applicable to that particular developer.



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1  
2 Council President Leventhal,  
3 We're not imposing our will on the City of Gaithersburg in violation of state law.

4  
5 Marc Hansen,  
6 No, it would not violate 23 (a).

7  
8 Council President Leventhal,  
9 We're entering into a voluntary agreement with the City of Gaithersburg on whatever terms  
10 we agree to on this annexation resolution.

11  
12 Marc Hansen,  
13 That's correct.

14  
15 Council President Leventhal,  
16 Mr. Subin, did you want to speak to that?

17  
18 Councilmember Subin,  
19 Well, Mr. President, you used the right word... imposing.

20  
21 Council President Leventhal,  
22 And I said we we're not imposing. That's what I said.

23  
24 Councilmember Subin,  
25 You are not imposing a legal requirement. You are imposing a -- no, upon them a  
26 "voluntary," in quotes, requirement to do this. Now I'll shift from a legal argument to a  
27 pragmatism argument and thank you for the segue. Here's what we risk. How many more  
28 issues are we going to voluntarily impose on them before the city simply says, "You know  
29 what, the heck with you guys. We're going to sit back and we're going to wait five years  
30 and we're going to do what we want and there is nothing can you do about it, Mr. County."  
31 Nothing can you do about it and what are you going to lose? You're going to lose this  
32 agreement on the MPDUs, you're going to lose the -- which they don't have to take. You're  
33 going to lose the agreement on the TDRs, which are not required, may not be required,  
34 could not be required. No one knows the answer at this point and the number varies from  
35 zero to 97, or 94. You know what? We're going to lose a school site. You're going to lose  
36 30 acres and some -- without or without -- you can leave this place inhabited by a couple  
37 of cows eating the grass out there. I have a lovely time every other day probably watching  
38 those cows out there. They're pretty cows, they're peaceful cows. They can stay that way  
39 for five years and then someone else will come in and develop it. And we'll lose the school  
40 site and everything else that is being agreed to here. We're talking about the integrity of a  
41 co-existing branch of government and whether or not big brother Montgomery, which is far  
42 from perfect, is going to not impose these voluntary requirements, but if you don't take the  
43 voluntary requirements, we won't vote for it. That's hostage -- it's legislative hostage  
44 taking. It's simply legislative hostage taking. And at some point, the tax revenues or not,  
45 the city -- the city government, which I have plenty of arguments with, have several

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1 running battles with them. Mr. Feldman and I were in one of those earlier. But you know  
2 what? At some point their pride is going to say "We're the elected body here, not you, and  
3 we make these decisions." I know the Council likes to ignore the statutes and the  
4 Legislature and the Court of Appeals, but guess what. They're lined up against you.

5  
6 Council President Leventhal,  
7 Mr. Subin, I think your points are very well made and well taken and provide a strong  
8 basis for voting against the motion, as you've already stated you intend to do. So, that's --  
9 you're right on point. We're prepared to vote on Ms. Praisner's motion. Those in favor of  
10 requesting that the City of Gaithersburg voluntarily agree to have administration of the  
11 MPDUs on this parcel administered by County DHCA, in favor of Ms. Praisner's motion,  
12 will signify by raising their hands. That would be Mr. Silverman, myself and Ms. Praisner.  
13 Those opposed will signify by raising their hands? That is Mr. Knapp, Mr. Andrews, Mr.  
14 Perez, Mr. Subin, Mr. Denis, Ms. Floreen. The motion fails 6-3. Now, what I'm going to  
15 suggest if Ms. Praisner will agree, is that we stay on this issue of MPDUs at this time.

16  
17 Councilmember Praisner,  
18 Sure.

19  
20 Council President Leventhal,  
21 I know you've stated you have a third motion but I believe has to do with Transferrable  
22 Development Rights. Before we get into that issue, Mr. Perez has been working on a  
23 motion and is he ready to offer it now?

24  
25 Councilmember Perez,  
26 Yes, I am, and I even went so far as to make copies. We talked so long. I want to thank  
27 my colleagues for that long colloquy. It enabled me to think a little bit. Go to right to the  
28 bottom and this is an amendment to number -- Paragraph Number 3. If you go to  
29 Paragraph Number 3, it currently reads 12.5% of the residential dwelling units are built  
30 under the standards and requirements of the County's Moderately-priced Dwelling Unit  
31 Program, (County code, Chapter 25(a) and all implementing regulations). My amendment  
32 would be to add a comma there, "Including, but not limited to the provisions pertaining to  
33 the income eligibility, control periods, pricing and the management of the program  
34 notwithstanding the provision." So, again, add a comma and then put "Including but not  
35 limited to the provisions pertaining to the income eligibility, control periods, pricing, and  
36 management of the program, period." And then the next sentence is designed to get it at  
37 the issue of Gaithersburg residents. "Notwithstanding the provisions of the County's  
38 MPDU program, the City of Gaithersburg may establish a preference for Gaithersburg  
39 residents that meet the County's criteria." We can debate whether it's a one-time  
40 preference or a preference in perpetuity. I left that deliberately vague because I don't  
41 really have a strong feeling, but...

42  
43 Council President Leventhal,  
44 Why did you replace "who" with "that"? I think it should be -- isn't it "who," Gaithersburg  
45 residents "who"?

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Councilmember Perez,  
Who. Who. Who!

Council President Leventhal,  
Your earlier draft here was "Gaithersburg residents who"...

Councilmember Perez,  
Who. Okay.

Council President Leventhal,  
Okay, is there a second for Mr. Perez's motion?

Unidentified Speaker,  
Second.

Council President Leventhal,  
Okay, the motion is made and seconded. Discussion on Mr. Perez's motion, Ms. Floreen.

Councilmember Floreen,  
I have a legal question for staff and, frankly, it applies to a variety of these elements. As I recollect under annexation law, agreements of this nature are in effect for five years. Is that correct?

Marc Hansen,  
Under Article 23 (a), the city can enter into an annexation agreement with the property owner. That agreement will last however long the terms of agreement provide it lasts for. The five years comes from, as I understand it, the five years comes from the fact that the County can expressly agree to allow the city to substantially change the County zoning on that property within -- immediately upon annexation. If they...

Councilmember Floreen,  
Right.

Marc Hansen,  
If the County agrees. If the County doesn't agree, then the city has to wait five years before they can substantially change the zoning on the property to be annexed.

Councilmember Floreen,  
At which point none of these elements can be in play, necessarily.

Marc Hansen,  
That's, I guess, theoretically possible.

Councilmember Floreen,

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1 Without a long-term commitment. I wanted to ask that question at this moment and  
2 perhaps ensure that somewhere, perhaps, it would be -- that condition that applies across  
3 the board would be that this is contingent upon the City of Gaithersburg entering these  
4 long-term commitments with the applicant. I don't think that is an issue of disagreement,  
5 but I would hate for things with respect to the MPDU program and in a variety of other  
6 conditions here to be able to be -- to disappear after five years. Any development project, I  
7 think, this is a multi-year phased project. It's complicated and will take a considerable  
8 number of years to implement, that being the overriding theme throughout this. And I  
9 honestly don't know if that is additional language that I would propose to be added to Mr.  
10 Perez's language, with respect to three, or across the board as a separate requirement.  
11 And I guess I would like help from staff to identify the right place for that. Because I think  
12 that the issue of administering the program would be a long-term obligation, as would  
13 some of the other perhaps more short-term, there are a number longer-term  
14 obligations identified in this agreement.

15  
16 Council President Leventhal,  
17 Are you proposing an amendment in the second degree, Ms. Floreen?

18  
19 Councilmember Floreen,  
20 At this point, no, but I wanted to highlight that in our conversation on this and we have a  
21 couple of minutes to resolve this language.

22  
23 Councilmember Praisner,  
24 Can I -- I have a...

25  
26 Council President Leventhal,  
27 No, you'll get your turn, Ms. Praisner. but Mr. Subin is next...

28  
29 Councilmember Floreen,  
30 Okay. I wanted to raise that right now.

31  
32 Council President Leventhal,  
33 ...if Ms. Floreen is yielding.

34  
35 Councilmember Floreen,  
36 And let me ask them to look at language for me. Thanks.

37  
38 Council President Leventhal,  
39 Mr. Subin.

40  
41 Councilmember Subin,  
42 I thank Mr. Perez for this language. I think it is a move in the right direction. I would ask  
43 Mr. Feldman that you take back to the mayor and the Council that you all have the ability  
44 here to take the first steps toward a workforce housing program. That you can take what  
45 Mr. Perez has written down here and open this up not simply to city residents, but to

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1 firefighters who serve the city, to teachers who serve the city, to city and County police  
2 officers who serve the city, to the firefighters, career and volunteers, who serve the city to  
3 take part in the program. And then you will probably be split here between Gaithersburg,  
4 Washington Grove, and Rockville, in terms of responsibility for the Crown Farm. but  
5 Rockville would be the first due, but it would be a place where folks, career and volunteer,  
6 who work at Gaithersburg/Washington Grove, could also along with the teachers who  
7 were County employees, along with the other school system employees, the members of  
8 [SCIU] who serve those city schools.

9  
10 Fred Felton,

11 Thank you, Mr. Subin. I will take that back to our Council, but my sense is a clear majority  
12 of the Council will mandate the 12.5% MPDUs. For this parcel, it's probably not coming  
13 into play. My biggest concern about the proposed amendment is simply the words "and  
14 management." I'm not exactly clear what that would mean in Mr. Perez's motion. We have  
15 no objection to the income eligibility, control periods, pricing, but I'm not clear on what the  
16 Council's expectation on the word "management" is.

17  
18 Councilmember Perez,

19 I think if you look in the regulations that are set forth, administering the program, there are  
20 a number of fairly transparent requirements set forth there. And I am happy to go through  
21 line-by-line, it's not meant to be, not meant to be unduly burdensome. We're not asking  
22 you to do necessarily more, although, you know, I can't stop colleagues from that, but  
23 we're trying to establish the County's program, frankly, as the floor of what have you will  
24 do. One of the reasons I didn't support and I have great respect for my great friend and...

25  
26 Councilmember Praisner,  
27 Marilyn

28  
29 [LAUGHTER]

30  
31 Councilmember Perez,  
32 I was going to say "Mrs. Perez."

33  
34 [LAUGHTER]

35  
36 Councilmember Perez,

37 My late mother whose anniversary we'll celebrate on May 11th. That is a compliment. Yes.  
38 Yes.

39  
40 Aris Mardinosice,

41 Mr. Perez, one question I have about the management, there is no question management  
42 will be exactly the same. You mean that the City of Gaithersburg will manage the program  
43 per your management?

44  
45 Councilmember Perez,

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1 Using the same principles set forth in the County code and regulations.

2  
3 Barbara Sears,  
4 Mr. Perez, I think of this...

5  
6 Councilmember Silverman,  
7 May I make a suggestion, why don't you put in like "management criteria" or something?

8  
9 Barbara Sears,  
10 Yeah.

11  
12 Councilmember Perez,  
13 Sure. I have no problem with that.

14  
15 Councilmember Silverman,  
16 ...maybe you usurp the...

17  
18 Councilmember Perez,  
19 Management criteria. Management does imply bodies.

20  
21 Council President Leventhal,  
22 Management criteria.

23  
24 Multiple Speakers,  
25 [INAUDIBLE].

26  
27 Council President Leventhal,  
28 Management criteria. Okay. Without objection, the amendment should be amended with  
29 the word "criteria."

30  
31 Councilmember Perez,  
32 That's a good point.

33  
34 Council President Leventhal,  
35 And Mr. Perez, if you're yielding, Mr. Andrews is next, followed by Ms. Praisner.

36  
37 Councilmember Andrews,  
38 Thank you. I would look to hear the city's reaction to a term added to require that MPDUs  
39 be built on-site.

40  
41 Fred Felton,  
42 That would certainly be our Mayor and Council's expectations. That being said, as we try  
43 to formulate our policy, we're very mindful of the issues Elizabeth Davison's department is  
44 having with the condominium prices. We would like to certainly see all the MPDUs on-site,  
45 but I would be concerned about placing a higher burden on this property than the



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1 remainder of the county at this point. It would certainly be a goal, but I don't believe it  
2 would be equitable for a condition of annexation to require standards above your current  
3 law. It would be our goal to achieve that as a sort of a commercial for the city. We'll have a  
4 first -- or second in a series of work sessions on our overall housing policy coming up  
5 starting May 8th. Again, I don't see how we will be equitable for a higher standard on the  
6 property.

7  
8 Councilmember Andrews,

9 I hear what you're saying. Would you agree that if it turned out there are -- there were few  
10 MPDUs built on-site, that would be unfortunate?

11  
12 Fred Felton,

13 It would absolutely be unfortunate. I can assure you that of the -- going back to the plan  
14 itself, there will be a strong multi-family component at the transit station and over the retail.  
15 That may prove to be the challenge. We're going to try to work through it. The bulk is  
16 single families in townhouses with 12.5% MPDUs in it built on-site period.

17  
18 Councilmember Andrews,

19 Let me ask Mr. Mardinosice for his thoughts on it.

20  
21 Aris Mardinosice,

22 Same, no difference. We will try our best to put all the MPDUs in our site -- I'm sorry. We  
23 will try to put all the MPDUs in our site, because that's only fair. And the developer, KB  
24 Homes, already committed to that. They're...

25  
26 Fred Felton,

27 And the thing I would add, Mr. Andrews, we would want our MPDUs to look like the other  
28 units.

29  
30 Aris Mardinosice,

31 One thing that always KB Homes projected to have the exactly same facade and the be  
32 best development that we can develop on our site.

33  
34 Councilmember Praisner,

35 I think I was next and my comment relates to the issue Ms. Floreen raises about the five-  
36 year period. The five-year period relates...

37  
38 Councilmember Floreen,

39 The language.

40  
41 Councilmember Praisner,

42 Right, but I wanted to just, if I can comment, the five-year period relates to the length of  
43 time in which it could not develop. If you did not abide by the -- because of the change in  
44 zoning, but if you implement a program that is the parallel with the same standards,  
45 requirements, and structure of the MPDU program, then you will have units and you

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1 commit to that for the parcel. You will have units that are MPDUs and some of them are  
2 rental, you will have units for 90-some years. So the -- I'm not sure I understand the five-  
3 year relevance. If you have language, Ms. Floreen, after Ms. Perez, whose light -- Mr.  
4 Perez whose light is on next...

5  
6 Councilmember Perez,  
7 We're having trouble with that Mr. and Mrs. today.

8  
9 Councilmember Praisner,  
10 I am, too. Yeah, I will -- we'll get back to on you that issue.

11  
12 Councilmember Perez,  
13 I shouldn't have dressed up in drag last night.

14  
15 Councilmember Praisner,  
16 Tom. Tom. I'm not going to go out to dinner with you again, Tom.

17  
18 [LAUGHTER]

19  
20 Councilmember Praisner,  
21 It must have been in the food.

22  
23 [LAUGHTER]

24  
25 Councilmember Praisner,  
26 It was the crab cake.

27  
28 Councilmember Perez,  
29 It was the crab cake [INAUDIBLE]. Are you through?

30  
31 Councilmember Praisner,  
32 Yes, I am. I'm sharing, Mr. Leventhal.

33  
34 Council President Leventhal,  
35 Okay, we're on...

36  
37 Councilmember Praisner,  
38 No, Mr. Perez...

39  
40 Council President Leventhal,  
41 I understand, Mr. Perez has his light on. We're ready to vote on his amendment. The only  
42 thing standing between a vote on his amendment are his comments. His is the only light  
43 on.

44  
45 [LAUGHTER]

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Council President Leventhal,  
His is the only light on.

Multiple Speakers,  
[INAUDIBLE]

Councilmember Perez,  
You will notice that my light just went off.

Council President Leventhal,  
So those in favor of Mr. Perez's amendment will signify by raising their hands. It's unanimous. Okay, on the matter of Transferrable Development Rights. Ms. Praisner.

Councilmember Praisner,  
My substitute for Item Number 2 is "Up to but no fewer than -- up to, but no fewer than 60 TDRs will be purchased by the developer. The amount -- the quantity will be determined during the preliminary plan review by Gaithersburg. If it's determined that the amount of TDRs would generate less than a million dollars, then a million-dollar contribution is made in support of the County's Agricultural Preservation program", and the rest of the language.

Unidentified Speaker,  
Second.

Council President Leventhal,  
Okay, the motion is made and seconded...

Councilmember Praisner,  
May I speak to it?

Council President Leventhal,  
You may speak to it.

Councilmember Praisner,  
Okay, it's my assumption, given reading the master plan documents, that there is more than a passing reference to TDRs as it relates to this parcel. It's also a significant parcel. As Mr. Murray from Park and Planning suggested and as Ms. Floreen commented on, we don't know the number of TDRs, but I think that would be associated with this process. But, I think there is now agreement that the number of TDRs are no more than 94. Not the 200 or some that had been suggested. I think through the discussion of the TDRs as Mr. Murray said, two-thirds, if there were two-thirds as an expectation for where the Planning Commission would come out with an initial requirement, two-thirds of those would be more than the 60 that I am suggesting here would be purchased. And the number, the actual number, as I said, would be determined by the preliminary plan review. My expectation will

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1 be that there would be TDRs in this process. What the number would be, above 60, the  
2 two-thirds that we... [AUDIO PROBLEM] ...would be part of the negotiation. We also don't  
3 know what the dollar amount will be for the purchase of the TDRs to farmers, that is a  
4 fusion of the purchase and negotiation price. I respect and appreciate my colleague's  
5 suggestion of a million dollar contribution to the Ag land Preservation Easement Fund and  
6 that to me would be the fallback in all cases if by some reason you get through this  
7 process and it's not up to the million dollars. I suspect that the purchase of TDRs would be  
8 more than a million dollars. But that would depend upon the number of TDRs and the  
9 purchase price at that time. My goal is to at least require some TDR purchase as a  
10 substitute for the million-dollar contribution. And that's the intent of my motion.

11  
12 Councilmember Perez,  
13 Could you just read your verbiage again.

14  
15 Councilmember Praisner,  
16 Sure, "Up to 94, but not fewer than 60 TDRs will be purchased by the developer. The  
17 actual number of TDRs will be determined during the preliminary plan review process by  
18 Gaithersburg." But -- and then the language that exists with the initial statement, "but in no  
19 cases would less than a million dollars be associated with the TDR purchase and if it's  
20 less than a million dollars, a million dollars would be contributed to the County's  
21 Agricultural Preservation Fund.

22  
23 Council President Leventhal,  
24 Mr. Knapp.

25  
26 Councilmember Knapp,  
27 Thank you, Mr. President. Clearly the notion of the Ag Reserve has been one of significant  
28 discussion in this Council the last eight months and given the task force we put in place  
29 today, continues to be a significant priority moving forward. As you look at this parcel and  
30 as you look at the discussion taking place so far, there are a lot of moving parts. What we  
31 have in front of us has a proposal that addresses transportation, looks at education, looks  
32 at agriculture, addresses all of those pieces and we're trying to move all of them in and in  
33 a productive fashion. There is some value calculation, that the developer and the city and  
34 we have agreed to, to some extent as to how well the pieces come together. The reality is  
35 that I still think that we need to put more, have more of a commitment on this parcel to  
36 agriculture and to the Ag Reserve and the TDRs themselves. One question I have, I  
37 wanted to check on is the discussion of Ms. Floreen raised earlier, the in addition of the  
38 fact that the parcel could be rezoned within five years. How would that, if Ms. Praisner's  
39 motion were to be accepted, how would that potentially impact the requirement to  
40 purchase TDRs?

41  
42 Ralph Wilson,  
43 Did you want to...

44  
45 Councilmember Knapp,

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1 I mean there it was a different -- it was related to a different topic, but I think the same...

2  
3 Councilmember Floreen,

4 I think this is an issue long-term, Mr. Wilson has proposed language overall that would  
5 ensure long-term commitment. I don't know if you want to talk about this yet.

6  
7 Ralph Wilson,

8 I could read it to you, if I understood what Councilmember Floreen was getting at. Would  
9 you like to do that now?

10  
11 Councilmember Knapp,

12 I guess -- is there a possibility that the ability to purchase TDRs -- or the requirement to  
13 purchase TDRs would go away after that five-year period as the way things are currently  
14 structured?

15  
16 Ralph Wilson,

17 It depends on the strength of the annexation agreement, I think, that the city enters into  
18 with the applicant. If they hold them to the annexation agreement, then the five-year  
19 period that is established.

20  
21 Councilmember Knapp,

22 So whatever is established would prevail.

23  
24 Ralph Wilson,

25 That would be my guess. Yes.

26  
27 Councilmember Knapp,

28 Okay, all right. Okay. In light of that, I think that it sends the message that continues to  
29 keep us committed in the direction that we as a Council have taken so far this year to  
30 have a requirement that addresses, as Ms. Praisner is recognized, up to 94 and no fewer  
31 than 60., and then using a million dollars as a floor makes sense for us to proceed with.

32  
33 Council President Leventhal,

34 Ms. Floreen.

35  
36 Councilmember Floreen,

37 I have to say no one's going to know what the number is. And we had that at the very  
38 beginning of the conversation. They would not know and they can't calculate it, because  
39 it's not based on the County numbers. So can you have this conversation, but it's totally  
40 academic and they would never know until the final preliminary plan decision, which was  
41 the first sentence on this subject.

42  
43 Councilmember Praisner,

44 Two-thirds, two-thirds.

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1 Barbara Sears,  
2 I think we could address, Mr. Knapp, your issue, both of you in terms of the timing. But if --  
3 I think the difficulty is what Ms. Floreen raises, that it will rezoned MXD. There will be no  
4 way. You saw the difficulty in trying to determine if it's zero, or 94, or more. So that was  
5 why the payment was a fair way to approach it. What we could do with five years is say  
6 that it will be made within five years of the signing of the agreement, or the time of the  
7 annexation, that that payment will be made. So you will be assured that the payment  
8 would be made and we'll make sure we have a number that is fair.

9  
10 Councilmember Praisner,  
11 That's not adequate.

12  
13 Councilmember Knapp,  
14 I mean, that's my concern. One in the hand is worth two in the bush. And I think, at this  
15 point, we need to be able to make sure we're making a significant commitment to  
16 agriculture and to show we're doing that. I don't want to leave something out there that  
17 we're not certain of. To that end, given some of that feedback... Let me make this motion  
18 and see where it goes, as a substitute. If you look at the document we received April 24th  
19 from Ms. Sears, it outlines a number of things that are providing some value. And  
20 basically, what we're doing is a tradeoff of what do we think is more important, education,  
21 agriculture, transportation? If you look at this list, there are significant elements. One of  
22 them, though, I think is much probably less significant, relative to our other key priorities  
23 than others, and that is the payment for synthetic turf for the high school stadium. I  
24 understand the evaluation will be roughly a million dollars?

25  
26 Barbara Sears,  
27 Correct.

28  
29 Councilmember Knapp,  
30 I would make the motion, then, to increase the payment to the County in lieu of TDRs to  
31 \$2 million, eliminate the synthetic turf as one of the elements, and so that we're assured of  
32 a \$2 million payment into the Agricultural Easement Program. And I would make that as a  
33 substitute motion or a second.

34  
35 Unidentified Speaker,  
36 I'll second.

37  
38 Council President Leventhal,  
39 Okay, a substitute has been made and seconded. Ms. Praisner has her light on.

40  
41 Councilmember Praisner,  
42 Well, that doesn't, that may be nice for our Easement Program, but the farmers wouldn't  
43 get TDRs to be purchased. I think we could determine what the rezoning would generate  
44 from a calculation of TDRs. And we could -- that's why it I said up to 94 would be  
45 purchased. You could purchase them as part of the redevelopment process, and the





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1 preliminary plan would generate the number that it is. And that would require the purchase  
2 of TDRs and it would have a floor of no less than a million but I suspect more than a  
3 million.

4  
5 Council President Leventhal,  
6 Mr. Perez.

7  
8 Councilmember Perez,  
9 I am struggling with the number of 60 and the uncertainty that surrounds this. It's kind of  
10 like when I -- you know, my brother called me a while back because his business, they  
11 were having -- the IRS was coming in to look and he had some questions. And I said the  
12 good news when the IRS comes in is -- there is no good news.

13  
14 [LAUGHTER]

15  
16 Councilmember Perez,  
17 But I tried to think of some good news. And the good news is, if they come in and you go  
18 lower than you pay, they will give you that refund of lower than you paid if you owe more,  
19 they will give you more. And so there is some uncertainty there. I feel like we're throwing  
20 darts against the wall here, no -- we don't have a clue right now and I really tried to study  
21 the issue of how you determine TDRs. And I have concluded it's not a science, it is an art.  
22 I'm having difficulty processing the number 60 because I don't know that there is any  
23 empirical basis to come up with that particular number. And that's the struggle I'm having.  
24 I want to figure out, I think one value that we would like is the value of certainty. But the  
25 issue of trying to calculate TDRs is anything but certain and that's the policy dilemma that  
26 we have here. I guess that's why you agreed to pay a certain amount. I guess we can  
27 debate whether that amount is the proper amount.

28  
29 Barbara Sears,  
30 And we can make sure it gets paid in the five years.

31  
32 Councilmember Perez,  
33 Again, I think that begs the issue of whether that's the proper -- what would be 62 TDRs --  
34 we don't know because you don't know what the market value is.

35  
36 Barbara Sears,  
37 Well, the market value we've been using is about \$40,000 and it fluctuates.

38  
39 Councilmember Subin,  
40 No, it's about \$45,000 today.

41  
42 Councilmember Perez,  
43 Well, then today, so 65 -- that would be \$2.5 million, roughly? Okay. When -- are we  
44 talking about five years from now this determination would be made of TDRs?  
45



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1 Barbara Sears,  
2 We don't know when. I mean it would be...

3  
4 Councilmember Perez,  
5 Well, the rezone...

6  
7 Barbara Sears,  
8 It would be made normally when you move forward and go record plat. Then you would  
9 have to show that you bought the easements, you know, you bought 'em. And then you  
10 put the easement information on the record plat. It's the end of the process, right before  
11 construction. And it's done, not necessarily all done at once. You know, you'd figure it out  
12 but you might buy them over time.

13  
14 Councilmember Perez,  
15 I guess what I'm struggling with is why don't we do something that has the actual number.  
16 that are determined at a date certain or a floor of, as opposed to picking a number now. A  
17 number that none of us have any confidence is the right number. I would rather do it when  
18 there is an empirical basis, so that neither the developer nor the Council is guessing.

19  
20 Aris Mardinosice,  
21 Mr. Perez, the TDR evaluation can go from zero to 94.

22  
23 Councilmember Perez,  
24 Correct.

25  
26 Aris Mardinosice,  
27 That means we can come back to you five years from now or 10 years from now and say  
28 "We are zero," Park and Planning will come back say, "No, we're 94." And we'll have  
29 same arguments, we're going to go back and forth. The best way that I know how to settle  
30 it today and tell us how much we've got to pay to you and move on. I think that's the best  
31 for everyone, every party.

32  
33 Councilmember Perez,  
34 I hear nothing from Gaithersburg. You don't have a dog in this fight is what I'm hearing you  
35 say. You're silent.

36  
37 Fred Felton,  
38 That's very well said, Mr. Perez.

39  
40 Councilmember Perez,  
41 You're silent. Okay. Okay.

42  
43 Council President Leventhal,  
44 Mr. Subin.

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Councilmember Subin,

Well, in essence, there is a dog in the fight. And it's in some respects, there is not a dog in the fight. Part of the problem here is we're suffering from the phenomenon of far too many moving parts. And nobody -- everybody wants to get their piece in and it's starting to complicate everything. Look, if the money goes into the easement program the land owners, the farmers, get their money. Do you think they care what happens to that TDR once they go to the bank? They couldn't care less what you did with it. As far as they're concerned it's an easement program. The land is gone, they can't do anything on it. For those who have complained that there is too much density here, if you put the TDRs on, if you require the TDRs, guess what? You increase the density. So, there is a dog in the fight, Fred... in terms of ultimately how many units are on there and the impact on the roads and the impact on the schools and everything else. Now, if the number is settled sometime after today, the city especially by the fifth year can say we don't require TDRs. We don't care, no TDRs. They can do it. And it's within their power to do that. If you're taking -- I don't know what the number is -- the \$1 million mark, \$2 million? The \$2 million that is no longer AstroTurf and goes to the farmer's, then they get the money now. The money's taken out. And frankly when we negotiated before this thing went to the city as an annexation issue, before the mayor even knew that this idea was percolating, and we worked on the issue of the school... I don't even remember the issue of AstroTurf coming up, I don't know how it got in there, You know, go to the turf farms, buy the farm's TDRs and go up there and buy their turf and put their turf on that land instead of the AstroTurf.

Councilmember Floreen,

There you go.

[LAUGHTER]

Councilmember Subin,

So you support them now and you buy their TDRs and then you support their business. Why are you all making this more complicated than it needs to be?

Fred Felton,

If I could briefly respond, Mr. Subin, as far as the appropriate density that our Mayor and Council approve, it's going to be independent of the TDR issue. It's going to be what density works. That's why it's really not County.

Councilmember Subin,

Then you will be violating the program. The TDR program says they buy the TDR, they get the density. That's it.

Fred Felton,

Fair enough.

Councilmember Subin,

You guys don't have it and you don't understand the program and that's what it is.

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Fred Felton,  
Okay.

Councilmember Subin,  
They buy the TDR, they get the density. Now, if you guys want to end up in court, like we like to be -- I'm sure Mr. Abrams would be happy to defend you in there for a taking -- go ahead and have then buy the TDRs and don't give them the development rights. It's a taking. So you would get the density, but Mr. Knapp has come up with an idea that avoids all of that. It takes care of the TDR issue and gives these guys some turf business down the road.

Council President Leventhal,  
Ms. Floreen.

Councilmember Floreen,  
Thank you. In response to Mr. Perez's questions, really, the challenge is that if you look at their resolution the city is proposing to rezone this to the MXD zone, which is not a TDR zone. There is no way to calculate the TDRs, period. The only issue is coming up with something that makes sense. And I think that Mr. Knapp's proposal to -- and I think Mr. Subin's suggestion is the right one. Buy the turf from the farmers, I think that's a twofer. I think Mr. Knapp's proposal takes us through the academic quandary and gets us to real results on this situation.

Council President Leventhal,  
Ms. Praisner.

Councilmember Praisner,  
Well, the Master Plan clearly assumes the TDRs will be used to increase density above the base density. So whether it's MX -- that is above the existing base density that exists there now or is the base -- above the base density that the County imagines in this master plan for more than half of the land, the County assumes... May I have the respect that I have given the rest of you? The master plan clearly assumes that the increase density will be acquired, or will be associated with the purchase of TDRs. So, you can calculate based on the existing density now what the assumptions of TDRs would be. The rezoning and the five years and when it happens or how it happens from the timing perspective is irrelevant to looking at the development that would be there based on the difference of development that would be assumed related to base density and the assumptions of TDRs being used for some of that increased density. Both Park and Planning Commission and the attorney for the developer agree that it's 94 TDRs that are at a maximum. We also heard -- Mr. Murray said that as they review parcels with TDRs associated with it they start with an assumption of two-thirds or 50%, whatever. I'm certainly amenable to looking at the number. I picked 60 because it's just less than two-thirds. You could go to 44, 41. That's half of the TDRs that are associated. The master plan also says, "The cities should require the use of TDRs in their annexation agreements when TDR receiving areas are

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1 involved. In the absence of TDRs the County Council should not concur in zoning  
2 densities greater than the base density shown in the master plan. I think that's pretty clear,  
3 too. The County has to sign off on this agreement or the developer and the city have to  
4 wait five years. This is not a legal issue, this is what the County's authority is under the  
5 master plan and under our TDR requirements. We can require the purchase of TDRs for  
6 the development above the base zone that is associated with at least 50% of the property.  
7 I'm willing to negotiate that amount, but I think that TDRs must be an element of this  
8 development agreement process. What that amount is and what they are as to dollar  
9 amount is associated with when the developer purchases them. We don't control that. But  
10 I think the farmers are looking for -- and so is the rest of the community -- what is our  
11 commitment to TDRs? And requiring the purchase of them, which is when our control to  
12 do and within our master plan to dictate, is what we should be about now. If you want to  
13 amend my motion to lower the 60 to 40 I'd be comfortable with that. But I think we need to  
14 require TDRs being purchased.

15  
16 Council President Leventhal,  
17 Mr. Knapp.

18  
19 Councilmember Knapp,

20 Thank you, Mr. President. I guess the difficulty with this discussion is it assumes there  
21 must be a right answer. And I guess if we've seen the documents and memos back and  
22 forth, that if nothing is clear, it's the fact that there is no right answer, there are lots of  
23 potential variations and scenarios. I have been very frustrated with our inability to  
24 calculate TDRs. And so we know that the answer is probably somewhere between zero  
25 and 94, although that is not necessarily been the case. Pam [Lindstrom] did a good  
26 calculation that had it higher than that, depending on how you want to go there. The  
27 realities are that there isn't "a" right answer, the question is what is our best answer today.  
28 There is an assumption implicit in this conversation that if you establish it at 60 or 94, or  
29 whatever number, that somehow that is a number that will ultimately be purchased. The  
30 reality is that we are running into difficulties right now, where there are requirements in  
31 Clarksburg, where there is an assumption that there is going to be increased density as a  
32 result of TDRs, that people are foregoing that density because they can't purchase --  
33 because of the difficulties in purchasing the TDRs. You have TDRs that were assumed to  
34 have been purchased that probably won't. You could run into a very similar situation here,  
35 where we would assume that you've sat and established 60, maybe you would never get  
36 there from here. Then you've rezoned some things. The question is if we want to support  
37 agricultural programs, which clearly nine of us have indicated numerous times over the  
38 course of the last six months that we want to do that, how do we ensure we have a  
39 significant payment into our Ag Easement programs? I think the way to do that, while  
40 perhaps not the greatest way, but maybe the best way today, is to come up with a number  
41 that is a real number, and especially when you look at the time value of money, if we can  
42 put ourselves with a \$2 million payment now and know we have that locked in, as  
43 opposed to hoping we get to 60 at some point in the future, that may get you up to \$2.4  
44 million, I think it makes a lot more sense for us to go ahead ensure our ourselves and  
45 ensure our farmers and our cultural community that we have \$2 million in the bank to

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1 support their programs, as opposed to hoping that some other numbers -- that we have all  
2 agreed are still a theoretical discussion -- come to some fruition. I would encourage my  
3 colleagues to go along with what we at least we have as a known quantity, especially  
4 when we're talking about a potential of a \$400,000 differential over some period of time,  
5 Let's take our \$2 million, put it into our Ag programs and continue to focus on our support  
6 of the agricultural community and the Ag Reserve.

7  
8 Council President Leventhal,

9 I would like to get on the record from anyone -- Callum, maybe it's you, I don't know who --  
10 can describe for us and for the audience the difference in purpose and in outcome  
11 between Transfer of Development Rights on the one hand and Agricultural Land  
12 Preservation Easement Fund on the other. What is the goal of both programs and what is  
13 the benefit to farmers of both of those programs? Can some knowledgeable staff person  
14 describe the difference between those two programs intended to preserve the Ag  
15 Reserve? Mr. Subin, your light is on, if you want to speak to that personally.

16  
17 Councilmember Subin,

18 Yeah, I believe, to the farmer a there is no difference. The farmer is selling their land and if  
19 it is under the, the easement, those TDRs get extinguished. If it is bought on a free market  
20 those TDRs, that density, will get transferred. So to the individual farmer or landholder,  
21 there is no difference. To the county there is a difference in terms of that density being  
22 transferred. In this case even at \$50,000, a TDRs, you're talking about 40 TDRs which  
23 would then be extinguished, if the price goes down, the number of TDRs bought would  
24 then go up. This would give the farmers the money in the bank and in this case if it is in an  
25 Easement Program that TDRs get extinguished.

26  
27 Council President Leventhal,

28 Thank you very much, and I will ask staff to confirm this. But let me just ask another  
29 question, and I'll pose it to my colleague, Mr. Subin, and then staff can confirm whether it  
30 is correct. Not only, in fact would the -- If I am hearing this correctly, I am not stating a  
31 position on Mr. Knapp's amendment at this point, I'm just trying to grasp the issue.  
32 Payments to the County's Preservation Easement Funds are transferred by the County to  
33 farmers and -- and this is the critical point -- do not require the increased density in the  
34 receiving area. So that putting the money in the Easement Fund, and not necessarily  
35 requiring the TDRs, achieves the same purpose of Ag land preservation without leading to  
36 increased development in the non-ag area.

37  
38 Unidentified Speaker,  
39 That's correct.

40  
41 Councilmember Praisner,  
42 No.

43  
44 Council President Leventhal,  
45 Can staff comment on that?



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Jeff Zyontz,

If I may, Jeff Zyontz, Chief of Countywide Planning. There are two separate programs and they're actually additive. Selling TDRs is the ability of a landowners who had those rights and haven't sold them at one unit for every 25 acres. In addition to ability to sell those rights and get money for that, they can also enter the Easement program in addition to that. So it is two sources of revenue to promote agriculture.

Council President Leventhal,

Okay, but answer my question. Is the effect of dollars spent from the Easement fund, the preservation of ag land, similar to the idea that extinguishing your TDR rights by -- or selling your TDR rights and using them in a receiving area, do they not both result in the same outcome, that is preservation of agricultural acreage?

Councilmember Subin,

Yeah, the answer to that is yes. The difference is under program "A" the density is transferred. If what Mr. Leventhal is saying, which sounds like what he wanted to do, and I think is the intent of Mr. Knapp's proposal, is the money would actually be paid to the County. And the County would then turn around at some point and buy up those TDRs. And it has been the Council's intent...

Councilmember Silverman,

No, no, no. It goes in the Ag...

Jeff Zyontz,

It's a separate...

Councilmember Subin,

All right, it goes in the Ag Easement Fund and then the Council buys -- or the County buys the land.

Jeff Zyontz,

No.

Council President Leventhal,

Let me pose the question this way. Let me pose the question this way. And I'm gonna actually claim the floor.

Councilmember Subin,

But the easement extinguishes

Council President Leventhal,

I'm going to claim the floor, if I could. I'm going to act as a Councilmember and ask a question. I'm claiming the floor here. Let us assume for the moment that we are environmentalists. Let us assume for the moment that we are seeking to reduce our

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1 footprint on planet earth. Let us assume that we are interested in the preservation of open  
2 space and the minimization of the built footprint. Let us take from that perspective. Would  
3 not a dollar -- could we not argue that a dollar devoted to the Easement Fund achieves the  
4 purpose in a manner that is more satisfactory from that perspective of minimizing our  
5 footprint on planet earth than a dollar devoted -- than a requirement of TDRs because the  
6 TDRs bring with them a concomitant obligation to build more in the receiving area. Am I  
7 not correct?

8  
9 Jeff Zyontz,  
10 You are correct.

11  
12 Council President Leventhal,  
13 Thank you.

14  
15 Jeff Zyontz,  
16 There is another reason you are correct as well. Is that four of the five TDRs would not  
17 result in density on the farmland itself because you can only build one unit for every 25  
18 acres.

19  
20 Council President Leventhal,  
21 But they would result in density in the receiving area.

22  
23 Jeff Zyontz,  
24 That's correct.

25  
26 Council President Leventhal,  
27 But the easement does not.

28  
29 Jeff Zyontz,  
30 That's correct.

31  
32 Council President Leventhal,  
33 That's my point. Ms. Praisner.

34  
35 Councilmember Praisner,  
36 But in this case we're not talking about change in density. So the density will be there  
37 without the purchase of the TDR.

38  
39 Unidentified Speaker,  
40 No.

41  
42 Councilmember Praisner,  
43 Yes, because the density is going to occur in the town of Gaithersburg whether or not you  
44 purchase a TDR to do it. There is the density -- It's not the folks are not getting a

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1 contribution to the TDR and therefore not getting density because the easement is better  
2 because there is no density associated with it. The density is coming anyway.

3  
4 Council President Leventhal,

5 But, no, wait a minute. This is really a very important point. Is it not the case though, Ms.  
6 Praisner, that your original proposal, before it was amended, would that not impose, as  
7 Mr. Subin was pointing out, on the city of Gaithersburg the requirement of higher density  
8 in return for the purchase of TDRs?

9  
10 Unidentified Speaker,

11 Sure.

12  
13 Council President Leventhal,

14 Wouldn't there have to be higher density?

15  
16 Councilmember Praisner,

17 No, all it is saying is that the density that zone generates is going to require to get it the  
18 purchase of TDRs. You're still going to have the density.

19  
20 Council President Leventhal,

21 Well, then why would the developer purchase any TDRs?

22  
23 Councilmember Praisner,

24 Because we would require it, because we would require it, that's the reason.

25  
26 Jeff Zyontz,

27 They would be required to buy TDRs because they are increasing the density on a portion  
28 of their ground. And the whole complicating factor is we don't know exactly how much they  
29 will increase the density on that portion of ground. Overall, you know the density, it is as  
30 high as it is in the master plan. So they effectively are at getting the density they would  
31 have achieved from TDRs. The question is -- well, they're potentially getting the density  
32 with TDRs. We just don't know that answer until we have a preliminary plan in front of us.  
33 At the time there is a preliminary plan we will know precisely the numbers. It won't be as  
34 academic or theoretical an exercise.

35  
36 Multiple Speakers,

37 [INAUDIBLE]

38  
39 Barbara Sears,

40 What it would do, Mr. President, is it would ensure that you are not going to build that one  
41 house per 25 acres where you put that easement. So even if you had this theoretical  
42 debate whether you are increasing density on the receiver's site or not I think the  
43 easement would have the effect of restricting that to agricultural and not having farmettes  
44 or whatever you want to have.



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1 Council President Leventhal,  
2 But this is the other side of that.

3  
4 Barbara Sears,  
5 That is not only the other side.

6  
7 Council President Leventhal,  
8 It's not only the issue of the density in the receiving area, which I'm still not clear on,  
9 because Mr. Subin was asking is not the City of Gaithersburg required to increase the  
10 density because it's a receiving area, but there's the second point, which is the fifth TDR.  
11 Which is that -- an easement means you don't develop at all. Four out of your five TDRs,  
12 you might still develop the fifth TDR. Mr. Silverman.

13  
14 Aris Mardinosice,  
15 Mr. President, if I can add one thing I think it will solve all the problems. Because I don't --  
16 I am totally confused about TDRs, but I know one thing, always, \$1 today is better than \$2  
17 tomorrow.

18  
19 Councilmember Silverman,  
20 Thank you.

21  
22 Council President Leventhal,  
23 Mr. Silverman.

24  
25 Councilmember Silverman,  
26 The density on this property in the master plan is 2,000 units. If they go through the  
27 County they can get 2,450. The agreement that we have here caps -- caps this at 2,250.  
28 So already there's going to be 200 units less. Anyway you cut it, as Mr. Leventhal  
29 indicated, the goal we are trying to achieve is to preserve as much land in the Ag Reserve  
30 as possible. We have an opportunity here to get \$2 million now, as opposed to who knows  
31 how it will play out depending on what the density level is. Suppose for argument's sake if  
32 you even wanted to tie it into a certain density level, that the City of Gaithersburg only  
33 approves 2,000 units, you'd get zero TDRs under that concept. I'd rather have the money  
34 in hand in a program that we know works than to speculate. The other piece that is  
35 missing that we glossed over entirely that Mr. Subin talked about an hour ago is while we  
36 continue to get mired in the trees so to speak or the farm so to speak about the difference  
37 between 60 TDRs versus \$2 million in the Ag Easement, is we are getting a high school  
38 site. That the school system says it is worth anywhere from 30 to \$40 million. I think it  
39 makes sense to take \$2 million into our Ag Easement Program, which will help out the  
40 environment, which will help out preserved farmland, and get our high school site as part  
41 of the package. We could spend in the next hour debating this, but some of us would like  
42 to actually vote.

43  
44 Council President Leventhal,  
45 Mr. Subin?

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Councilmember Subin,  
I just talked to Mr. Abrams. and here's where I think -- you know, we're running in different directions here. There is the cap in the agreement on the number of units, so the developer has already agreed to the cap. Generically, Mr. Leventhal is absolutely right. In this specific instance, is an exception to that rule, but Mr. Leventhal correctly answered the issue.

Council President Leventhal,  
The vote is on the substitute offered by Mr. Knapp. Yes?

Unidentified Speaker,  
Excuse me...

Council President Leventhal,  
I think we are not going to do that. I think the County Council's going to vote now. The vote is on the substitute offered by Mr. Knapp. Those in favor of the substitute will signify by raising their hands. It is Mr. Knapp, Mr. Perez, myself, Mr. Silverman, Mr. Subin, Ms. Floreen, and Mr. Denis. Those opposed will signify by raising their hands. It is Mr. Andrews and Ms. Praisner. The substitute carries. We are ready to vote on the annexation resolution. Ms. Floreen.

Councilmember Floreen,  
Thank you Mr. President. I asked Mr. Wilson for additional language to clarify the expectation of this Council that these terms and conditions of the resolution before us would be encapsulated into a long-term obligation, which is not entirely clear from the resolution as drafted.

Ralph Wilson,  
Yeah, I think that would be a good addition.

Councilmember Floreen,  
Mr. Wilson, could you read that language?

Ralph Wilson,  
Yeah, it would follow onto the second paragraph under the action section on page two.

Councilmember Floreen,  
Where it says, "In accordance with the provisions," ya-de-da.

Ralph Wilson,  
It would pick up again and say, "...provided the city enters into a long-term agreement with the applicant to implement the following terms."

Councilmember Floreen,

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1 Just an editorial correction, but I think it would avoid the concern about things changing  
2 over the long-term.

3  
4 Council President Leventhal,

5 Okay, without objection, the description of a long-term agreement will be added to the  
6 condition without objection. We are ready to vote on the annexation resolution. Those in  
7 favor of the resolution will signify by raising their hand. It is Mr. Knapp, Mr. Perez, myself,  
8 Mr. Silverman, Mr. Subin, Ms. Floreen, and Mr. Denis. Those opposed to the annexation  
9 by the City of Gaithersburg will signify by raising their hands. It is Mr. Andrews and Ms.  
10 Praisner. The motion carries, 7-2. Let me just get the sense of my colleagues here. We  
11 have a 1:30 public hearing scheduled, why don't we -- We have committee meetings  
12 scheduled at 2:00 . Why don't we put everything to 2:00? We will begin a public hearing at  
13 2:00.



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1 Council President Leventhal,

2 Good afternoon, ladies and gentlemen. This is a public hearing and Zoning Text  
3 Amendment 06-08, accessory buildings, one-family residential zones, which would amend  
4 the zoning ordinance for the purpose of reducing yard coverage and maximum height of  
5 an excess rebuilding in certain zones, increasing the minimum set back requirement for an  
6 accessory buildings under certain circumstances and generally amending accessory  
7 building standards in certain zones. The Planning, Housing and Economic Development  
8 Committee work session is tentatively scheduled June 19th, 2006. at 9:30. Please call  
9 240-777-7910 to confirm. Anyone who wishes to submit additional material for the Council  
10 to consider should do so by the close of business Friday, May 12th. We have three  
11 witnesses for this earring. Mr. Greg Russ, Mr. Wayne Goldstein, and Mr. Rick Sullivan.  
12 Greg, press your button, introduce yourself, and proceed, please.

13  
14 Greg Russ,

15 For the record, Greg Russ, from Montgomery County Planning Board. I am actually just  
16 here to speak that the Planning Board is actually hearing this item this Thursday and we  
17 would like the record to remain open until next week. But you've stated that it's open until  
18 May 12th, so we're okay with that. I will get the report to you as soon as possible.  
19 Probably by early next week.

20  
21 Council President Leventhal,

22 Okay, very effective testimony. Is Wayne Goldstein here? I don't see him. Is Rick Sullivan  
23 here? I don't see him. Okay, that concludes agenda item eight. Agenda item nine is a  
24 public hearing on a supplemental appropriation to the Montgomery County Fire and  
25 Rescue Service FY'06 Capital Budget, and amendment to the FY'05 through '10 Capital  
26 Improvements Program for fire apparatus replacement in the amount of \$30,750,000. A  
27 joint meeting of the Public Safety and Management Fiscal Policy Committees is scheduled  
28 for today at 2:30. The record will close at the end of the hearing. There are no speakers.  
29 The council is in recess. The MFP and Public Safety Committees are meeting here at  
30 2:30. The T&E Committee is meeting in the third floor conference room at 2:30. The  
31 Council will reconvene tonight for a public hearing at 7:30 p.m. Is that on the seventh floor  
32 or the third floor? It doesn't say. Seventh floor. Okay.  
33